

**SPOUSES JIMMY T. BASHIR AND MARLYN D. BASHIR,
PLAINTIFFS-APPELLANTS, VS. SPOUSES RICARDO V. RANGEL AND
MATILDE RANGEL, UNITED OVERSEAS BANK PHILIPPINES
(FORMERLY WESTMONT BANK) ...**

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before this Court is an appeal seeking to nullify and set aside the Resolution[1] dated 18 May 2012 of the Regional Trial Court Branch 40 of Dagupan City which granted the motion to dismiss the Complaint in Civil Case No. 2011-0359-D on the grounds of *litis pendentia* and forum shopping.

The facts are as follows:

Defendant-appellee Estrellita Natividad (Natividad) was the previous registered owner of a parcel of land located in Bonuan Gueset, Dagupan City, consisting of 655 square meters and covered by Transfer Certificate of Title No. 63987. On 31 July 1995, she entered into a Contract of Lease with Right to Purchase with plaintiffs-appellants spouses Jimmy and Marlyn Bashir (spouses Bashir). The lease was for a period of twenty five (25) years, from 15 August 1995 to 15 August 2020, and contained a provision granting spouses Bashir the exclusive right and option to purchase the subject property during the duration of the lease. With the long term lease and having been given the right of first refusal, spouses Bashir introduced improvement thereon by constructing a two (2) storey building where they conduct their hardware business. The Contract of Lease was registered by Natividad on 1 August 1995 with the Register of Deeds, albeit it was not noted at the back of the title of the property.

On 10 October 1995, unknown to spouses Bashir, Natividad mortgaged the property to United Overseas Bank Philippines (UOBP). Natividad defaulted in her loan obligations, hence, the mortgaged property was foreclosed and sold at a public auction to UOBP as the highest bidder. Subsequently, the Certificate of Sale dated 27 September 1996 was registered with the Register of Deeds on 26 October 1996. It was only several years thereafter, or sometime in December 1999 that spouses Bashir discovered the mortgage. Immediately upon discovering the mortgage, they went to the bank and informed UOBP of their exclusive right to purchase the subject property under the lease contract and offered to buy the property for P1,200,000.00. UOBP, however, refused to recognize them citing lack of personality on the part of spouses Bashir. Thus, to be able to transact with UOBP, spouses Bashir secured from Natividad a Waiver of Right whereby the latter relinquished all her interests over the property in favor of spouses Bashir, but UOBP still refused to deal with them. Spouses Bashir were, therefore, compelled to enforce their right to purchase against Natividad under the lease contract, who, on 8 July 2004, filed a Complaint for nullification of the foreclosure proceedings before Branch 42 of the Regional Trial Court of Dagupan City, which was docketed as Civil Case No. 2004-0240-D (the Natividad Case). Natividad filed a notice of *lis pendens* with the Register of Deeds of Dagupan City. Notwithstanding said notice of *lis pendens*, however, spouses Ricardo and Matilde Rangel (spouses Rangel) bought the property from UOBP for P1,600,000.00, and had the title transferred to their name. In the course of the proceeding, spouses Bashir, invoking the waiver of right executed by Natividad in their favor, intervened in the said case by filing a

Complaint-In-Intervention wherein they prayed, among others, that UOBP and spouses Rangel, who subsequently bought the property from UOBP, be prevented from taking possession of the subject property; that they be allowed to redeem the subject property; and that they be reimbursed of the value of the improvement they introduced in the property in case redemption is no longer possible. Spouses Bashir also filed a Notice of Lis Pendens with the Registry of Deeds of Dagupan City to warn any person of the pending litigation involving the subject property. Spouses Rangel, later on, also intervened in Civil Case No. 2004-0240-D joining UOBP as defendants.

On 29 July 2011, RTC Branch 42 of Dagupan City rendered a Decision in Civil Case No. 2004-0240-D upholding the validity of the foreclosure sale of the subject property. It also declared that spouses Rangel lawfully acquired the subject property and that spouses Bashir have no better or superior right of claim against spouses Rangel. On 11 November 2011, pending the resolution of their Motion for Reconsideration, spouses Bashir filed before Branch 40 of the Regional Trial Court of Dagupan City, a Complaint against spouses Rangel, UOBP and Natividad for Annulment of Document/Title, Rescission, Legal Redemption, Specific Performance and Damages. The said case was docketed as Civil Case No. 2011-0359-D (the Bashir case) and is now the subject of this appeal. In their Complaint, spouses Bashir prayed, among others, that their exclusive right and option to purchase the subject property be declared valid; that the Deed of Sale between UOBP and spouses Rangel be declared null and void or rescinded; that Transfer Certificate of Title No. 80156 in the name of spouses Rangel be declared null and void, or rescinded; that UOBP or spouses Rangel be ordered to execute the corresponding deed of sale in favor of spouses Rangel to accept the purchase price thereof as indicated in the deed of sale.

In response to the Complaint, UOBP filed a Motion to Dismiss based on *litis pendentia* and forum shopping due to the pendency of Civil Case No. 2004-0240-D before RTC Branch 42.

On 18 May 2012, the trial court issued a Resolution granting the Motion to Dismiss of UOBP and dismissed the Complaint of spouses Bashir on the grounds of *litis pendentia* and forum shopping. Their Motion for Reconsideration having been denied, spouses Bashir interposed this appeal and raised the following errors allegedly committed by the trial court:

“I.

THE TRIAL COURT COMMITTED A GRAVE AND SERIOUS REVERSIBLE ERROR IN UPHOLDING THE EXISTENCE OF LITIS PENDENTIA AND FORUM SHOPPING IN THE CASE AT BENCH.

II.

THE TRIAL COURT GRAVELY ERRED IN UPHOLDING THE GROSS BAD FAITH AND NEGLIGENCE OF DEFENDANT BANK IN GRANTING THE MORTGAGE WITHOUT CONDUCTING ON-THE-SPOT INVESTIGATION OF THE LAND OFFERED AS SECURITY, DESPITE THAT THE ONE IN ACTUAL AND VISIBLE PHYSICAL POSSESSION AND OCCUPANCY ARE THE PLAINTIFFS.

III.

THE TRIAL COURT ALSO SERIOUSLY ERRED IN GIVING PREMIUM TO THE MALICIOUS ACQUISITION OF THE SUBJECT PROPERTY BY DEFENDANTS RANGEL DESPITE BEING BUYERS IN BAD FAITH.

IV.

THE TRIAL COURT FURTHER COMMITTED SERIOUS AND GRAVE REVERSIBLE ERROR IN DISMISSING THE COMPLAINT IN CIVIL CASE NO. 2011-0359-D.”[2]

The main issue to be resolved in this case is whether or not the lower court erred in dismissing the complaint on the grounds of *litis pendentia* and forum shopping.

We rule in the affirmative.

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.[3]

The three (3) elements of litis pendentia are the following: (a) identity of parties, or at least such parties who 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) the identity, with respect to the two (2) preceding particulars in the two (2) cases, in 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.[4]

In the case at bench, only the first requisite of litis pendentia is present. It is undeniable that identity of parties, or at least representing the same interest, exists in both cases. The plaintiffs in the Natividad case are Arlito Natividad and Estrellita Natividad while the defendants are UOBP, the Register of Deeds of Dagupan City, and the Ex-Officio Sheriff of RTC Dagupan. The Bashir spouses and Rangel spouses intervened therein joining the plaintiffs and the defendants, respectively. On the other hand, the plaintiffs in the instant case are the Bashir spouses while the defendants are UOBP, the Rangel spouses and Estrellita Natividad. The rule does not require absolute identity of parties. A substantial identity of parties is enough to qualify under the first requisite.[5]

However, the second requisite, i.e., identity of rights asserted and reliefs prayed for, does not subsist here. A careful scrutiny of the allegations and prayers in both the Bashir spouses' Complaint-In-Intervention in the Natividad case and their Complaint in the instant case readily reveals that the two complaints are anchored on entirely separate and distinct causes of action. Different facts were alleged in both cases and different evidence were presented therein by the parties. The Bashir spouses claim in the Natividad case that they succeeded Estrellita Natividad in the latter's right to redeem the foreclosed property by virtue of Waiver of Right signed by Natividad. In the instant case, the Bashir spouses are invoking their right of first refusal to purchase the subject property under the Contract of Lease with Right to Purchase (Exhibit "A") executed between them and Estrellita Natividad on 31 July 1995.

It bears stressing that in the Natividad case, the Bashir spouses never mentioned the Contract of Lease with Right to Purchase as a source of their right to the subject property. Instead, they solely relied upon their actual possession of the subject property and their purported right under the Waiver of Rights signed by Estrellita Natividad to redeem the subject property from the UOBP or the Rangel spouses after the bank extra-judicially foreclosed it, bought the same at public auction and eventually sold it to the Rangel spouses. Thus:

"3. That intervenors acquired their right to possess and own the property in litigation covered by T.C.T. No. 63987, hereto attached as Annex "A", registered in the name of Estrellita M. Natividad by virtue of a Waiver of Right on the said property executed by Arlito Natividad and Estrellita Natividad with the corresponding right to negotiate and pay whatever their obligation with the Westmont Bank xxx;

I. That for and in consideration of the said waiver of their property right, plaintiff Arlito Natividad received the amount of P70,000.00 xxx;

xxx xxx xxx

- That complainant-intervenors, being the lawful and actual possessor of the property in litigation, were not given that opportunity to exercise their right of redemption over the property by the defendant, United Overseas Bank, formerly Westmont Bank. Being the actual possessors, defendant bank should have given them the priority to purchase the same;

- Intervenor Spouses Ricardo B. Rangel and Matildi Rangel, having personal knowledge that there is a notice of lis pendens in the title, proceeded in buying the same and transferred it in their names. Said spouses merely stepped into the shoes of the alleged owner of the property, United Overseas Bank, that whatever rights and warranties the said bank possesses shall be merely transferred to the buyer of the property.

xxx xxx xxx

PRAYER

WHEREFORE, it is most respectfully prayed that:

1. The defendants and intervenors be prevented from taking possession of the property in litigation;
2. Ordering the defendants and intervenors to allow complaint-intervenors to exercise their right of redemption in the property in litigation;
3. That in the alternative, in case redemption is no longer feasible, the defendants and intervenors be ordered to pay/reimburse complainant-intervenors of the value of their residential house and the hardware and construction supply building which they constructed in property in litigation, considering that they are builders in good faith;

xxx xxx xxx.”[6]

On the contrary, the Bashir spouses anchored their rights and reliefs in the instant case on their exclusive right of first refusal to purchase the subject property under the Contract of Lease with Right to Purchase. Thus:

“2. The plaintiffs are lessees of, with exclusive right to purchase, that parcel of land, including the house standing therein, covered by TCT No. 63987 and owned by the lessor, NATIVIDAD xxx.

3. Pursuant to said contract, the Plaintiffs were granted the exclusive right to purchase the said lot and house during the period of the lease at a price stated in the latest tax declaration of said properties.

4. However, without the Plaintiff's knowledge and consent, Natividad had, in evident bad faith, mortgaged the same properties on October 9, 1995 to the BANK (then formerly Westmont Bank) for P1,000,000.00, and the latter accepted said mortgage despite its knowledge of the contract of lease afore-mentioned. xxx.

xxx xxx xxx.

6. It was only in November 1999 that plaintiffs discovered the mortgage over the said land when a staff of the BANK visited the place.

7. Forthwith, and in the exercise of their exclusive right to purchase the said lot, being actual occupants thereof, plaintiffs offered in December 1999 to buy back said properties from the BANK, but the latter did not entertain them claiming lack of personality of the latter despite being informed of their preferential and exclusive right as contained in the contract of lease.

xxx xxx xxx

9. Being entitled to their right of first refusal, these properties should first be offered to the plaintiffs to purchase it, and only when they could not afford the price that the BANK could offer it to others; in fact, the plaintiffs are willing to buy and pay the BANK's price over said properties, in the exercise of their right of first refusal.

xxx xxx xxx

13. Notwithstanding said notice of lis pendens that was even annotated in the subject title, the DEFENDANT-SPOUSES, in gross evident bad faith and in cohort with the BANK, pushed through in

purchasing said properties, whereby the latter, despite its knowledge of the right of first refusal of the plaintiffs who had in fact offered to redeem/buy said property, had unlawfully executed a formal deed of sale for P1,600,000.00 in favor of the former who were then issued Transfer Certificate of Title No. 80156, rendering said deed and title VOID, if not RESCISSIBLE.

xxx xxx xxx.

PRAYER

WHEREFORE, it is most respectfully prayed that upon the filing of the instant complaint, xxx judgment be rendered in favor of the plaintiffs and against the defendants, to wit:

- a. declaring the plaintiffs to have a valid right of first refusal to purchase the subject property.
- b. declaring the Deed of Absolute Sale (Annex "H") as null and void, or as rescinded.
- c. declaring Transfer Certificate of Title No. 80156 (Annex "I") as null and void, or as rescinded.
- d. ordering defendant BANK or defendant-SPOUSES to execute the corresponding deed of absolute sale over the subject property in favor of the plaintiffs.
- e. directing the plaintiffs to refund, and the defendants-SPOUSES to accept, the purchase price thereof as indicated in the deed of absolute sale (Annex "H").

xxx xxx xxx."[7]

Clearly, the Bashir spouses filed the instant case to assert their right as lessees of Estrellita Natividad under the Contract of Lease with Right to Purchase and not their purported right of redemption assigned to them by Estrellita Natividad. While there was a mention of the Waiver of Rights in the Complaint a quo, it was not used therein as a source of the Bashir spouses' cause of action against herein defendants-appellees. Put differently, the cause of action alleged by the Bashir spouses in their Complaint-in-Intervention in the Natividad case is entirely different and separate from the cause of action that they are invoking in the instant case.

What further militates against the cause of herein defendants-appellees is the fact that the evidence presented by the Bashir spouses in the Natividad case were different from the evidence that they have to present in the instant case. It is settled that the test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not. This method has been considered the most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties. It has even been designated as infallible.[8]

In the Natividad case, the relevant evidence that they have presented in proving their alleged superior right of possession over the subject property is the Waiver of Rights executed by Estrellita Natividad. As stated in the Decision, the exhibits of the Bashir spouses per the Minutes of Pre-Trial Conference dated 9 September 2008 are limited to the following:

- Exh. "A" – TCT No. 63987
- Exh. "B" – Letter of Jimmy Bashir addressed to Arlito and Estrellita Natividad
- Exh. "C" – Tax Declaration No. 4094023
- Exh. "D" – Tax Declaration No. 09-2783-I
- Exh. "E" – Certificate of Payment dated August 8, 2006

Exh. “F” – Realty Tax Receipt dated August 8, 2006

Exh. “G” – Realty Tax Receipt dated July 17, 2005

Exh. “H” – Permit issued by the Mayor's Office

Verily, the Contract of Lease with Right to Purchase was not included as their evidence in the Natividad case. In contrast, this Contract of Lease with Right to Purchase is the very basis of the Bashir spouses' right of relief against herein defendants-appellees in the instant case as shown in the allegations and the relief portion of the Complaint a quo.

Lastly, the presence of the third element, i.e., that the identity of the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to res judicata in the other, does not find any support from the evidence on record. The following are the elements of res judicata:

- (1) the judgment sought to bar the new action must be final;
- (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;
- (3) the disposition of the case must be a judgment on the merits; and
- (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[9]

The Decision in the Natividad case did not cover the Contract to Lease with Right to Purchase. Hence, it was not a judgment on the merits insofar as the rights of the parties, e.g., right of first refusal, to the Contract to Lease with Right to Purchase is concerned. A judgment on the merits is one rendered after argument and investigation, and when there is determination which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial. Thus, a judgment on the merits is one wherein there is an unequivocal determination of the rights and obligations of the parties with respect to the causes of action and the subject matter of the case.[10] As ruled by the Supreme Court in Cruz vs. Court of Appeals:[11]

“xxx Res judicata applies only where judgment on the merits is finally rendered on the first complaint. It does not apply if no trial has been held yet on the first complaint. A judgment on the merits presupposes that trial has been conducted, evidence presented, and issues sufficiently heard and passed upon. It is a judgment rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal technical point.”

While the lower court has ruled in the Natividad case that the foreclosure proceeding was lawful and that the Bashir spouses have no better right of claim against the Rangel spouses because the latter have lawfully acquired the subject property, it did not take into consideration the issue of the right of first refusal of the Bashir spouses under the Contract of Lease with Right to Purchase. Hence, there was no judgment on the merits as regards the said issue.

Also, while there was identity of the parties and subject matters between the Natividad case and the instant case, the causes of action claimed by the Bashir spouses in the two actions are different. In the Natividad case, the lower court arrived at its ruling merely “on the pleadings, evidence identified and admissions made during the pre-trial”.[12] As We have already discussed, these “pleadings, evidence identified and admissions made during the pre-trial” did not cover the Contract of Lease with Right to Purchase because the only right that the Bashir spouses were invoking therein is their right under the Waiver of Right executed by Estrellita Natividad. Hence, res judicata is not applicable in this case.

On the issue of whether or not the Bashir Spouses are guilty of forum shopping, We rule in the negative.

The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in

one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for certiorari. It is the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration.[13]

With Our finding above that not all the elements of *litis pendentia* are present in this case or that a final judgment in one case will not amount to *res judicata* in another case, the ruling of the lower court as to the presence of forum shopping has no leg to stand on.

What is pivotal in determining whether forum shopping exists or not is the vexation caused to the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[14]

Certainly, the continuation of the instant case in the lower court would not create a possibility of conflicting decisions between the two courts because the facts upon which the cause of action is based in the instant case are different from those in the *Natividad* case.

Be it remembered that the Bashir spouses have introduced substantial improvements on the subject property and, as lessees-builders, they have certain rights under the Civil Code.

WHEREFORE, premises considered, the instant appeal is GRANTED. This case is hereby REMANDED to the lower court for further proceedings and final disposition.

SO ORDERED.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, at pp. 168-175.

[2] Rollo, pp. 25-26.

[3] *DotMatrix Trading v. Rommel B. Legaspi*, G.R. No. 155622, October 26, 2009, 604 SCRA 431, 436.

[4] *Spouses Mariano Marasigan and Josefina Leal v. Chevron Philippines, Inc., et al.*, G.R. No. 184015, February 8, 2012.

[5] *Ibid.*

[6] Records, pp. 131-133.

[7] Records, pp. 2-8.

[8] *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 342.

[9] *Heirs of Miguel vs. Heirs of Miguel*, G.R. No. 158916. March 19, 2014.

[10] *Melchor Custodio v. Rosendo F. Corrado*, G.R. No. 146082. July 30, 2004.

[11] G.R. No. 134090, 309 SCRA 714, 724.

[12] Decision of RTC, Branch 42, Dagupan City, pp. 5-6. Records, pp. 73-74.

[13] Roberto S. Benedicto v. Manuel Lacson, G.R. No. 141508, May 5, 2010, 620 SCRA 82, 97-98.

[14] Philip S. Yu v. Hernan G. Lim, G.R. No. 182291, September 22, 2010, 631 SCRA 172, 184.

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