

**INSULAR VENEER, INC. AND MARTIN TINIO, SR., PETITIONER, VS.
HON. ANDRES B. PLAN, AS PRESIDING JUDGE OF THE COURT OF
FIRST INSTANCE OF ISABELA, 1ST JUDICIAL DISTRICT, AND
CONSOL...**

G.R. No. L-40155. September 10, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Insular Veneer, Inc. and its president, Martin Tinio, Sr., seek to annul in this certiorari and mandamus case the orders of the Court of First Instance of Isabela, Cauayan Branch II dated August 27 and November 27, 1974, denying their motion to dismiss Civil Case No. II-1147. The grounds of the motion were *res judicata* and the two-dismissal rule. The antecedent facts are as follows:

On October 10, 1969 Consolidated Logging & Lumber Mills, Inc., a corporation domiciled at Angadanan, Isabela, filed, through its lawyer, Eulogio R. Rodriguez, a complaint for "damages and injunction" against Insular Veneer, Inc. and Tinio in the Court of First Instance of Isabela. The objective of the suit was to recover by means of a writ of preliminary injunction the logs which Consolidated Logging had delivered to Senador Li at the plywood plant of Insular Veneer, Inc. located at 2655 Old Panaderos Street, Sta. Ana, Manila. The plant was leased to Li (Civil Case No. 2158). Why an action for injunction and damages was filed instead of an action for delivery of personal property and why Li was not impleaded as a party were not explained in the complaint.

On that same date, October 10, Judge Luis Vera Cruz issued an order stating that "after a thorough deliberation" he arrived at the conclusion that "for the best interest of the parties, no *ex parte* preliminary injunction be issued". He scheduled on October 20 the hearing on the petition for preliminary injunction.

Three days later, or on October 13, Consolidated Logging filed an *ex parte* "motion for issuance of restraining order". On that same date Judge Vera Cruz issued a restraining order which, like a writ of *replevin*, allowed Consolidated Logging to withdraw from the plywood plant 200,000 board feet of logs and restrained Insular Veneer, Inc. from touching the remainder of the logs. Consolidated Logging was required to post a bond of P5,000, later increased to P10,000.

Jacinto R. Alejandro, the vice-president of Consolidated Logging, was appointed as special deputy sheriff to execute the restraining order and serve the summons. According to Insular Veneer, Inc., Consolidated Logging, by virtue of the restraining order, removed from the plywood plant 310,711 board feet of lumber.

After the issuance of the restraining order (which was really a writ of preliminary injunction functioning as a writ of *replevin*), a hearing was conducted on the petition for preliminary injunction. At that hearing Insular Veneer, Inc. assailed the lower court's jurisdiction to enjoin acts being performed or to be performed outside its territorial jurisdiction (*Tan, Jr. vs. Sarmiento*, L-24971, June 20, 1975, 64 SCRA 364; *Acosta vs. Alvendia*, 109 Phil. 1017 and other cases). That contention was reiterated in its motion to dismiss dated October 28, 1969. The motion

contained an alternative prayer for the increase of the bond to P100, 000 on the ground that the logs in litigation were valued at P200, 000.

The next day, October 29, 1969, or after Consolidated Logging attained its objective of taking possession of the logs and knowing that Insular Veneer, Inc. had not yet submitted its answer, Consolidated Logging filed a notice dated October 28, dismissing Civil Case No. 2158 pursuant to section 1, Rule 17 of the Rules of Court. A copy of that notice of dismissal was received by Insular Veneer, Inc. only on November 21, 1969.

On the same day, October 29, Consolidated Logging, without awaiting the action of the Isabela court on its notice of dismissal, refiled in the Court of First Instance of Manila the same complaint for "damages and injunction" against Insular Veneer, Inc. For that purpose, it hired another lawyer named Conrado Realeza. Consolidated Logging joined as new respondents in the Manila court Godofredo Katigbak and Rodolfo Vergara, the manager and employee, respectively, of Insular Veneer, Inc. and increased its claim for damages to P50, 000 (Civil Case No. 78089). No mention was made in the refiled complaint of the prior complaint filed in the Isabela court.

Obviously, Consolidated Logging refiled its action for damages and injunction in the Manila court in order to obviate the jurisdictional objection raised by Insular Veneer, Inc. in the Isabela court. Maybe Consolidated Logging desired to obtain possession of the remainder of the logs and to prosecute its claim for damages.

Judge Federico C. Alikpala of the Manila Court of First Instance in his order of November 26, 1969 denied Consolidated Logging's petition for a writ of preliminary mandatory injunction. He noted that Consolidated Logging had no contractual relations with Insular Veneer, Inc. and that Consolidated Logging had not shown any justification for requiring Insular Veneer, Inc. "to open the door of its property for the benefit and use" of Consolidated Logging. In another order dated January 5, 1970 Judge Alikpala dismissed the case for nonappearance of Consolidated Logging's counsel at the pre-trial.

After having been thwarted by the Manila court in its revival of its injunction action against Insular Veneer, Inc., Consolidated Logging returned to the Isabela court and there resuscitated the same complaint which it had already dismissed ex mero motu. Again, through Atty. Rodriguez, it filed in Civil Case No. 2158 a supposed "amended complaint" dated March 16, 1970. It contains the same prayer for an injunction (which the Isabela court has no jurisdiction to grant) and the claim for damages amounting to P25, 000, not the P50, 000 claimed in the Manila court.

The amendment consisted of the allegation that Insular Veneer, Inc. "impounded and padlocked" the chainsaw and fourteen pallets of plywood belonging to Consolidated Logging. There was no mention in the amended complaint of the supervening fact that Consolidated Logging had secured ex parte a restraining order, which like a replevin order, enabled it to take possession of more than 200,000 board feet of logs. The record does not show whether prior leave of court was secured for the filing of the amended complaint in a case which the plaintiff or petitioner Consolidated Logging had already dismissed sua sponte. The obvious lack of jurisdiction on the part of the Isabela court to issue an injunction to be enforced outside Isabela was ignored.

At this juncture, it is necessary to backtrack or present a flashback of the proceedings in the Isabela court during the time that Consolidated Logging was trying to get an injunction from the Manila court.

Judge Vera Cruz of the Isabela court did not pay any attention to Consolidated Logging's notice of dismissal dated October 28, 1969. That notice did not terminate Civil Case No. 2158. On October 30 Insular Veneer, Inc. filed in that case an omnibus motion reiterating its prayer that Consolidated Logging's bond should be raised to P100,000 because the latter had withdrawn logs measuring 310,711 board feet instead of 200,000 board feet only. On November 15 Judge Vera Cruz instructed the special deputy sheriff to desist from enforcing the restraining

order. The court required Consolidated Logging to file an additional bond of P90,000.

On February 27, 1970 Judge Vera Cruz denied Insular Veneer's motion to dismiss. He ruled that he had jurisdiction to issue the writ of preliminary injunction, which was enforced in Manila, because the writ was allegedly ancillary to Consolidated Logging's main action for damages.

Insular Veneer, Inc. in its motion for reconsideration called attention to Consolidated Logging's notice of dismissal. The lower court in its order of May 21, 1970 clarified that it dis-regarded Consolidated Logging's notice of dismissal because before that notice was filed a restraining order (which the court treated as a writ of preliminary injunction issued ex parte) had already been issued and Consolidated Logging's action was in reality an action to recover personal property and not an injunction suit. The lower court theorized that the filing of the amended complaint dated March 16, 1970 was tantamount to a withdrawal of the notice of dismissal and that the writ of preliminary injunction could be treated as a writ of replevin. The lower court noted that the injunction was dissolved in its order of May 2, 1970.

In that aforementioned order of May 21, 1970 the lower court ordered anew Consolidated Logging to file the additional bond of P90,000. It declared that Insular Veneer's claim for damages would be heard during the trial of the case on the merits. It set for hearing the contempt charge which Insular Veneer, Inc. had filed because of Consolidated Logging's abusive procurement and enforcement of the writ of preliminary injunction.

On June 15, 1970 Insular Veneer, Inc. and Tinio filed in the Court of Appeals a petition for certiorari and mandamus. They prayed that the proceedings taken by Judge Vera Cruz in Civil Case No. 2158 be set aside without prejudice to their claim for damages.

The Court of Appeals held that the Isabela court had no jurisdiction to issue the writ of preliminary injunction which was to be enforced in Manila; that the injunction, which restrained Insular Veneer, Inc. and Tinio from interfering with Consolidated Logging's supposed possession of the logs in Insular Veneer's plywood plant, was not ancillary at all to Consolidated Logging's action which was simply an action for the recovery of a sum of money; that Consolidated Logging could have secured a writ of preliminary attachment and not a writ of injunction; that the notice of dismissal, to be effective, had to be approved by the lower court; that the dismissal of the Manila case "appears now to be res judicata", and that Insular Veneer and Tinio could claim damages against Consolidated Logging by virtue of section 9, Rule 58 of the Rules of Court.

The Court of Appeals directed that after Insular Veneer, Inc. and Tinio had filed their answer, the Isabela court should hear the case including their claim for damages and the contempt incident (Insular Veneer, Inc. vs. Hon. Luis Vera Cruz, CA-G.R. No. 45488-R, June 10, 1971, San Diego, J., ponente, Concepcion Jr. and E. Serrano, JJ., concurring).

From that decision, Consolidated Logging and Judge Vera Cruz (who was improperly joined as a co-petitioner) appealed to this Court. The appeal was not given due course (Resolution dated March 16, 1972 in L-34415, Consolidated Logging & Lumber Mills, Inc. vs. Court of Appeals).

In the Isabela court the case was transferred to Judge Andres B. Plan and given the docket Number II-1147. Insular Veneer and Tinio filed their answer wherein they pleaded the defense of res judicata. That defense was again invoked in Insular Veneer's motion to dismiss dated May 28, 1974. As already stated, Judge Plan denied it in his order of August 27, 1974. The motion for the reconsideration of that order was denied by Judge Plan in his order of November 27, 1974. The herein petition for certiorari and mandamus to annul those orders was filed on February 18, 1975.

Consolidated Logging in its answer and memorandum contends that the rule of res judicata is not applicable to

this case. It argues that because the Isabela court never lost jurisdiction over Civil Case No. 2158 (now II-1147) the Manila court did not acquire jurisdiction over Civil Case No. 78089.

The issue is whether the Isabela court gravely abused its discretion in not dismissing Civil Case No. II-1147 on the ground of res judicata.

In resolving that issue, we are confronted with the unarguable fact that Consolidated Logging on its volition dismissed its action for damages and injunction in the Isabela court and refiled substantially the same action in the Manila court. Then, when the Manila court dismissed its action for failure to prosecute, it went back to the Isabela court and revived its old action by means of an amended complaint.

Consolidated Logging would like to forget the Manila case, consign it to oblivion as if it were a bad dream, and prosecute its amended complaint in the Isabela court as if nothing had transpired in the Manila court. We hold that it cannot elude the effects of its conduct in junking the Isabela case and in giving that case a reincarnation in the Manila court. Consolidated Logging filed a new case in Manila at its own risk. Its lawyer at his peril failed to appear at the pre-trial.

The unavoidable conclusion is that Consolidated Logging's amended complaint dated March 16, 1970 in the Isabela court is barred by the prior dismissal on January 5, 1970 by the Manila court of its similar complaint (See sec. 1[f], Rule 16, Rules of Court). The Court of Appeals correctly noted that that dismissal order has the force of res judicata. Rule 17 provides:

"SEC. 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, x x x the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

Section 2, Rule 20 of the Rules of Court provides that "a party who fails to appear at a pre-trial conference may be non-suited or considered as in default" (See *Vda. de Caina vs. Hon. Reyes and Dalisay*, 108 Phil. 513; *Saulog vs. Custombuilt Manufacturing Corporation*, L-29612, November 15, 1968, 26 SCRA 1).

Judge Alikpala's order dismissing Consolidated Logging's "petition" or complaint "due to the nonappearance of" its counsel did not contain the qualification that the dismissal was without prejudice. Hence, the dismissal order should be regarded as an adjudication on the merits. (See *Arellano vs. Court of First Instance of Sorsogon, Branch I*, L-34897, July 15, 1975, 65 SCRA 46; *Abustan vs. Ferrer*, 63 O. G. 7252; *Province of Pangasinan and Soriano vs. Palisoc*, 116 Phil. 609, 613).

The dismissal order has all the elements of res judicata. It is a final order on the merits, rendered by a court with jurisdiction over the subject-matter and the parties. Between the Manila case and the Isabela case there are identity of parties, identity of subject-matter and identity of cause of action (*San Diego vs. Cardona*, 70 Phil. 281, 283).

In *Aguilar vs. Gamboa*, 103 Phil. 183, it appears that in Civil Case No. 3064 of the Court of First Instance of Negros Occidental the administrator of the estate of Jose Aguilar filed an action to annul the decision in a foreclosure suit instituted by Serafin R. Gamboa. Civil Case No. 3064 was dismissed by reason of plaintiff's failure to appear at the hearing. Later, another administratrix of the estate of Jose Aguilar filed another case against Gamboa to nullify the same decision. It was held that the dismissal of Civil Case No. 3064 was conclusive or was res judicata.

Consolidated Logging contends that the Manila court did not acquire jurisdiction over Civil Case No. 78089 because two courts could not have jurisdiction to resolve the same issue at the same time. It argues that res

judicata presupposes a previously decided case, a circumstance which allegedly does not exist in this case. Those contentions are erroneous.

The different Courts of First Instance are courts of general jurisdiction of co-equal or coordinate rank. Under the rules of venue in civil actions (Sec. 2, Rule 4, Rules of Court), it is possible to file the same action in two Courts of First Instance simultaneously or one after the other. It is incontrovertible that the Manila court had jurisdiction over Consolidated Logging's action for "injunction and damages" against Insular Veneer, Inc., Tinio, Katigbak and Vergara, although the same action was pending in the Isabela court.

The provision in section 1(e), Rule 16 of the Rules of Court that an action may be dismissed because "there is another action pending between the same parties for the same cause" presupposes that two similar actions are simultaneously pending in two different Courts of First Instance. *Lis pendens* as a ground for a motion to dismiss has the same requisites as the plea of *res judicata* (1 Moran's Comments on the Rules of Court, 1970 Ed., pp. 488-489).

On the other hand, when a pleading is amended, the original pleading is deemed abandoned. The original ceases to perform any further function as a pleading. The case stands for trial on the amended pleading only (*Ibid*, 1 Moran, p. 363). So, when Consolidated Logging filed its amended complaint dated March 16, 1970 in Civil Case No. 2158, the prior dismissal order dated January 5, 1970 in the Manila case could be interposed in the Isabela court to support the defense of *res judicata*.

Indeed, this very point of whether Insular Veneer, Inc. could plead *res judicata* in Civil Case No. 2158 is already *res judicata* because, as already noted, the Court of Appeals squarely ruled that the dismissal order issued by the Manila court is *res judicata* since Consolidated Logging failed to appeal from that order. The said point is conclusive on Consolidated Logging (Sec. 49[c], Rule 39, Rules of Court). It is the point which was ignored by the lower court and which justifies the holding that it acted with grave abuse of discretion in not sustaining the plea of *res judicata* (*Manalo vs. Mariano*, L-33850, January 22, 1976, 69 SCRA 80, 91).

The trial court erred in not dismissing the amended complaint of Consolidated Logging on the ground of *res judicata* or bar by former judgment. To gloss over the Manila case would be to sanction Consolidated Logging's making a mockery of the judicial process or its trifling with impunity with the right to litigate. In doing justice in this case, one should not lose sight of the fact that Consolidated Logging had improperly utilized a mere restraining order (which was *coram non judice*) as a writ of replevin. In doing so, it escaped the onerous responsibility of filing a replevin bond.

It should be noted that Judge Alikpala also dismissed the counterclaim of Insular Veneer and Tinio against Consolidated Logging. Whether that dismissal has the force of *res judicata* and may be pleaded as a bar to the counterclaim, if any, of the same counter-claimants in the Isabela court is a point which is not decided in this case.

Parenthetically, it may be noted that Insular Veneer, Inc. and Tinio have repeatedly alleged that they want the Isabela case to be terminated because of the considerable trouble and expense involved in going to Cauayan, Isabela (See p. 6, petition; par. 8, Compliance and motion; Annex J of Petition; pp. 1 and 13, Memorandum). Whether that allegation implies that they will not pursue their claim for damages against Consolidated Logging is not clear.

WHEREFORE , the lower court's orders of August 27 and November 27, 1974 are set aside. It is directed to dismiss on the ground of *res judicata* the amended complaint of Consolidated Logging and Lumber Mills, Inc. in Civil Case No. II-1147, former-ly Civil Case No. 2158.

The lower court is further directed to hear and decide the claim for damages filed by Insular Veneer, Inc. and Martin Tinio, Sr., as contemplated in the final and executory decision of the Court of Appeals, and on the assumption that they are still interested in prosecuting that claim. Costs against private respondent.

SO ORDERED.

Fernando, Acting C.J., Antonio, and Martin, JJ., concur.

Barredo, J., concurs in separate opinion.

Concepcion, Jr., J., did not take part.

CONCURRING OPINION

BARREDO, J.:

I concur.

Basically, the main opinion ably prepared by Mr. Justice Aquino correctly disposes of the rather complicated procedural issues presented for Our resolution. It is to concretize and make more specific the basis of my conformity to the grounds of the ruling on res adjudicata and the directive to the Isabela court to proceed with the determination of the claim of damages of petitioners for the issuance of the restraining order of Judge Vera Cruz of October 13, 1969, which the Court of Appeals found to have been wrongful, as well as the incident of contempt initiated by Insular Veneer for Consolidated Logging's alleged abusive procurement and enforcement of that restraining order that I feel constrained to render this separate opinion.

The main opinion passes sub silencio the question, which to my mind is important for the enlightenment of all concerned, as to whether or not it was proper for Judge Vera Cruz to have ignored the notice of dismissal filed by Consolidated Logging on October 29, 1969 by still entertaining after said date Insular Veneer's motion to increase the injunction bond furnished by Consolidated Logging from P10,000 to P100, 000 which the said judge did raise to P90,000 in the order of November 15, 1969. Seemingly, it is assumed that Civil Case No. 2158 could continue despite the notice of dismissal. I view this particular point differently.

As will be recalled, Judge Vera Cruz denied on February 27, 1970 Insular Veneer's motion to dismiss which had been filed as early as October 28, 1969, a day before Consolidated Logging file its notice of dismissal. In its motion for reconsideration of such denial, Insular Veneer invited the attention of the court to the notice of dismissal filed by the plaintiff, but the court ruled it could not give effect to said dismissal notice, considering that it had issued a restraining order which had been actually carried out and, moreover, by the time it was resolving the motion for reconsideration, Consolidated Logging had already filed an amended complaint which the court held was tantamount to a withdrawal of the notice of dismissal. While indeed, the ultimate conclusion of the main opinion which is that Civil Case No. 2158 may not continue is correct, my position is that said case came to an end with the notice of dismissal, without prejudice to its being refiled, which Consolidated Logging actually did do in Civil Case No. 78089 of Manila.

I consider it as opportune here as elsewhere to elucidate briefly on the consequences of a notice of dismissal filed pursuant to Section 1 of Rule 17. The terms of the provision are clear and unequivocal. There should be no reason for understanding them otherwise. The section reads:

"SECTION 1. Dismissal by the plaintiff. — An action may be dismissed by the plaintiff without order of court

by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without pre-judice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. A class suit shall not be dismissed or compromised without the approval of the court."

As can be seen, Section 1 of Rule 17 clearly provides that the dismissal contemplated is "by the plaintiff" and "without order of the court." In other words, the dismissal takes effect upon the filing by the plaintiff of the notice of dismissal and no action of the court is required or is necessary to effectuate the dismissal. This point is precisely what makes dismissal before service of the answer different from dismissal after such service. In the latter, there is need for consent or approval of the court.

In ruling on this point, I notice that the Court of Appeals quoted in its decision in the certiorari and mandamus case filed by Insular Veneer against the orders of Judge Vera Cruz granting, on the one hand, the prayer for restraining order asked by Consolidated Logging and denying, on the other hand, the motion to dismiss of Insular Veneer, (CA-G. R. No. 45488-R) an excerpt from *City of Manila vs. Raymann*, 37 Phil. 421. Such reliance is misplaced.

The Raymann case was decided when the rule on dismissals by notice before answer is filed was still unknown. Section 127 of the Code of Civil Procedure which was the rule then in force reads thus:

"Sec. 127. Dismissal of Actions.--An action may be dismissed, with costs to the defendant, in the following cases:

1. By the plaintiff himself, by written request to the clerk filed among the papers in the case, at any time before trial, upon payment of the costs; provided a counterclaim has not been made, or affirmative relief sought by the cross complaint or answer of the defendant, or provided the judge shall not decide that the defendant has made such preparation for trial that it would be unjust to permit a dismissal without a trial on the merits;
2. By the court, when the plaintiff fails to appear at the time of trial, and the defendant appears and asks for the dismissal;
3. By the court, when the plaintiff fails, for an unreasonable length of time, to prosecute his action.

In either of these three cases a dismissal of the action shall not be a bar to another action for the same cause;

4. The court may also, in its discretion, allow a plaintiff to dismiss the action on payment of the costs after the trial has begun and at any time before final judgment, if the interests of justice so require, and in this case the dismissal shall not be a bar to another action for the same cause. The dismissal shall be entered on the docket of the court and shall be effective, when so entered, to end the action."

In other words, whereas under Section 127 of the Code of Civil Procedure a case may be dismissed by "request" of the plaintiff "at anytime before trial", Section 1 of Rule 17 quoted earlier above, contemplates a dismissal to be made "at any time before service of the answer or of motion (by the defendant) for summary judgment. " Besides, while the new rule expressly says that the dismissal before filing of the answer may be made "by the plaintiff without order of the court" by the mere filing of the notice of dismissal, the old rule readily implies the need for a court order. The words "by the plaintiff" in the old rule merely meant that the initiative comes from the plaintiff and not from the court itself, as in the other instances of dismissals therein provided for.

As to the ruling of Judge Vera Cruz that because he had already issued a restraining order, which had already been carried out, before the Consolidated Logging's notice of dismissal was filed, the court could not apply

Section 1 of Rule 17, seemingly, His Honor was of the view that since he had already taken action on the plaintiff's petition for a restraining order and had thereby actively assumed jurisdiction over the case, it was already too late for said plaintiff to thereafter dismiss the case without the consent of the court. Perhaps, His Honor might have felt that as damages might be suffered by the defendants as a result of the restraining order, it would be improper that the complaint be dismissed upon motion of plaintiff and thus leave the matter of the damages of the defendants undecided.

Of course, such a position is not without merit. I believe, however, that what is paramount is the wish or desire of the plaintiff manifested in his notice not to proceed anymore with the litigation. As I see it, such a declared desistance can be dealt with separately from the defendants' possible claim for damages. In other words, it is up to the defendants to take the necessary steps in connection therewith, and there is nothing in the rules which deprives the court of the power to proceed accordingly, irrespective of the dismissal of plaintiff's action. What I am trying to emphasize is that the court does not have to bother about the plaintiff's complaint once he has dismissed the same. It should instead concentrate exclusively on the claim for damages of the defendants if any is filed, in connection with which the court should receive evidence and render the appropriate judgment. After all, if the court has to take further action in the case upon initiative of the defendants and in the latter's interest, the plaintiff has no one to blame but himself for having petitioned for the restraining order only to dismiss the complaint upon the order being implemented. Indeed, the attitude of Consolidated Logging in this very case of filing its complaint obviously with the intent of having the same dismissed after it secured a restraining order illustrates vividly the propriety of considering the notice of dismissal in such instances to be automatically effective even as the court proceeds to grant relief to the defendants. In this connection, it might be necessary to add that in my considered opinion, the grant of relief to the defendants is procedurally possible even without a formal counterclaim just as the dismissal of plaintiff's complaint does not deprive the court of jurisdiction to pass upon the defendants' counterclaim.

Anent the directive to the trial court to hear and decide the claim for damages filed by respondent Insular Veneer, I believe that technically, the dismissal by Judge Alikpala of Insular Veneer's counterclaim had per se the force of res adjudicata. However, the effect of such dismissal was rendered nugatory when the Court of Appeals authorized the herein respondent Insular Veneer to file an answer in Civil Case No. 2158, notwithstanding it ordered the dismissal of plaintiff's complaint, and to simultaneously claim for damages. If Consolidated Logging wished to avoid this result, it should have raised the issue of res adjudicata in a supplemental pleading in the Court of Appeals. Not having done so, the ruling of the appellate court has become the law of the case. Again, while strictly speaking, I do not see the need for such formal answer referred to by the Court of Appeals, the formal claim itself of Insular Veneer for damages being sufficient for the purpose, the decisive point is that since the decision of the Court of Appeals recognizing the right of Insular Veneer to claim damages has become final, the appeal therefrom to the Supreme Court having been dismissed, said right has in consequence been revived and may not now be questioned, in spite of what happened in Civil Case No. 78089 in Manila.

In all other respects, I share the views articulated in the main opinion.

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