

**EDITH SUSTIGUER AND ISABEL APOSAGA, PLAINTIFFS-APPELLANTS,
VS. JOSE TAMAYO AND CITY OF BACOLOD,
DEFENDANTS-APPELLEES. RAMON VILLAMARZO, INTERVENOR.**

G.R. No. L-29341. August 21, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Assailed in the instant appeal elevated to this Court on a question of law by appellant Edith Sustiguer are the order dated December 8, 1977[1] issued by the then Court of First Instance of Negros Occidental, Branch IV, dismissing for lack of cause of action appellant's complaint for annulment of sale on installment and award of Lot No. 379--B-34, as well as the order dated January 30, 1968,[2] denying the motion for reconsideration of the aforesaid order.

The controversy at bar involves a 234-square meter lot known as Lot No. 379-B-34 situated at the corner of Lacson and Burgos Sts., Bacolod City, Negros Occidental. It is one of the 42 lots acquired by the City Government of Bacolod from the defunct Rehabilitation Finance Corporation, now the Development Bank of the Philippines, which lots were later converted into a subdivision known as Bacolod City RFC Subdivision for sale to qualified occupants. The rules and regulations governing the sale of said subdivision lots are contained in Ordinance No. 149, Series of 1958, enacted by the City Council of Bacolod.

Since Under Ordinance No. 149, there shall be only one (1) buyer or awardee for a subplot, the adverse possessors of Lot No. 379-B-34 were invited to the Office of the City Mayor for a determination of who the awardee shall be. The records show that on November 2, 1960, the Office of the Mayor awarded the lot in question to Isabel Aposaga as follows:

"Lot No. 379-B-34

"In connection with the award of Lot No. 379-B-34, it is agreed between EDITH SUSTIGUER and ISABEL APOSAGA that the award of the said lot be given to ISABEL and that a down payment of twenty percent (20%) of the total cost of the lot shall be made on or before November 15, 1960.

"Failure to make the down payment on said date, the City of Bacolod will be free to dispose or award the lot to any of the applicants.

"AGREED BEFORE me this 2nd day of November, at the Office of the Mayor, City of Bacolod.

(SGD.) "ENRIQUE V. OLMEDO

Secretary to the Mayor"[3]

Accordingly, the Office of the Mayor issued the following certificate:

"REPUBLIC OF THE PHILIPPINES

CITY OF BACOLOD

Office of the Mayor

"LOT NO. 379-B-34

"With the conformity of the interested parties and without resorting to a raffle Lot No. 379-B-34 is hereby awarded to Mrs. Isabel Aposaga, actual occupant of Lot No. 379-B-34.

"City of Bacolod, November 3, 1960.

"(SGD.) ENRIQUE V. OLMEDO

Secretary to the Mayor"[4]

When Isabel Aposaga went to the Secretary of the Mayor to make the down payment, she was allegedly advised to come back later as the Secretary was out of town. Having thus failed to make the required down payment, Aposaga was not able to effect the execution of the sale.

Subsequently, on May 16, 1961, the City Government of Bacolod, thru the City Mayor executed a Contract of Sale on Installment over said Lot No. 379-B-34 in favor of one Jose Tamayo.

On the principal allegation that the City Government of Bacolod sold Lot No. 379-B-34 to Jose Tamayo without notice to Edith Sustiguer and Isabel Aposaga or any one of them in violation of its commitment to award said lot to them, Edith Sustiguer and Isabel Aposaga filed on March 8, 1962 a complaint docketed as Civil Case No. 6528 for annulment of the sale on installment and award[5] of said lot against the Government of Bacolod and Jose Tamayo, claiming that the latter is neither qualified to apply for the award nor to purchase the said lot under the provisions of Ordinance No. 149, Series of 1958. It was also claimed that after the execution of the sale between Tamayo and the City of Bacolod, the former maliciously filed Civil Case No. 2867 for unlawful detainer against Aposaga and Sustiguer before the Municipal Court of the same City.

The City Government of Bacolod and Jose Tamayo filed their respective answers,[6] denying that the Secretary of the Mayor was absent during the alleged period when Aposaga failed to deposit the required twenty percent (20%) of the total cost of the land under litigation and that because of such failure plaintiffs lost whatever preferential rights they may have therein. Thereafter, Ramon Villamarzo, upon being allowed to intervene, filed on August 1, 1964, a complaint in intervention,[7] claiming among others to have been occupying 2/3 of subject land for the last ten (10) years by virtue of a house built thereon, and has therefore, the preferential right to purchase the same land under Section 3, paragraph (b) of said City Ordinance No. 149 and praying, among others: [a] that the contract executed by the City Mayor of Bacolod City and Jose Tamayo be declared as without having complied with the requisites of aforesaid Ordinance and [b] that he be given preference to acquire Lot No. 379-B-34.

On August 11, 1967, or five (5) years and five (5) months after the complaint was filed, Isabel Aposaga, one of the parties-plaintiffs, filed a "Motion to Withdraw Civil Case No. 6528 and Confess Judgment in Civil Case No. 7512,"[8] declaring that she had been paid for all her claim in said case, hence, she is no longer interested in its prosecution.

Edith Sustiguer, for her part, filed on September 8, 1967 a manifestation[9] stating that the withdrawal of Isabel Aposaga as party-plaintiff in Civil Case No. 6528 (Annulment of Sale on Installment and Award) and as party defendant in Civil Case No. 7512 does not change the status and character of the said cases considering that she was merely accommodated by her co-defendant in occupying the lot in question.

On September 9, 1967, the lower court issued an order[10] allowing the withdrawal of Isabel Aposaga as party-plaintiff, who was accordingly declared out of the case.

On September 16, 1967, Jose Tamayo moved for a preliminary hearing on his affirmative and special defenses and thereafter to dismiss both the complaint and complaint in intervention invoking Section 5 of Rule 16 of the Rules of Court.[11] He prayed that he be allowed to submit a written memorandum in support of his affirmative and special defenses.

Jose Tamayo filed on September 28, 1967 his memorandum[12] on the issue whether or not Edith Sustiguer has any cause of action against the defendants as shown by the recital of the complaint. Edith Sustiguer, on the other hand, filed on October 11, 1967, an opposition to the motion to dismiss for lack of cause of action and moved for judgment on the pleadings pursuant to Section 1 of Rule 19 of the Rules of Court.[13]

On December 8, 1967, the lower court issued an order[14] dismissing the complaint of Edith Sustiguer for lack of cause of action, stating thus:

"The allegations in the complaint show a cause of action in favor of plaintiff Isabel Aposaga but none in favor of the plaintiff Edith Sustiguer. After the plaintiff Isabel Aposaga had withdrawn her complaint, there is no more cause of action left in favor of the remaining plaintiff Edith Sustiguer. This proviso in the Court's order simply means that if Edith Sustiguer had any cause of action under the complaint, then such cause of action shall remain standing notwithstanding the withdrawal of Isabel Aposaga. But the order of this Court in question did not create a cause of action in favor of the plaintiff Edith Sustiguer. The order of this Court merely preserves and keeps intact whatever cause of action was existing in favor of the plaintiff Edith Sustiguer, but if there was none at the beginning, then the order of this Court could not create one in her favor."

Edith Sustiguer then filed on January 2, 1968 a motion for reconsideration and new trial claiming that the dismissal of the complaint is contrary to law as there was no preliminary hearing and that as plaintiff she still has a valid cause of action even after the withdrawal of Isabel Aposaga from the case as she was suing in her own right as an awardee entitled to the award in question.[15]

After Jose Tamayo filed his opposition[16] to the motion for reconsideration and new trial, the lower court issued an order[17] on January 20, 1968 denying the motion for reconsideration and new trial.

Hence, this appeal by Edith Sustiguer assigning the following errors:

I

THE LOWER COURT COMMITTED AN ERROR OF LAW IN DISMISSING THE COMPLAINT WITHOUT HOLDING A TRIAL ON THE MERITS ON A MERE MOTION OF THE APPELLEE THAT THE SAID COMPLAINT STATES NO CAUSE OF ACTION ALTHOUGH THE ALLEGATIONS THEREIN ARE SUFFICIENT TO CONSTITUTE THE CAUSES OF ACTION AGAINST THE APPELLEES.

II

THE LOWER COURT COMMITTED AN ERROR OF LAW IN MAKING A SWEEPING CONCLUSION THAT AFTER ISABEL APOSAGA WITHDREW AS PARTY-PLAINTIFF FROM THE COMPLAINT, THERE IS NO MORE CAUSE OF ACTION LEFT IN FAVOR OF THE REMAINING PLAINTIFF EDITH SUSTIGUER, THE HEREIN APPELLANT.

We affirm the order of dismissal of appellant's complaint for lack of cause of action. The lower court dismissed

the complaint after Isabel Aposaga, a co-plaintiff of appellant herein, withdrew her complaint, which was allowed by the lower court in its order dated September 9, 1967, thus leaving appellant herein, Edith Sustiguer, as the remaining party-plaintiff.

The dismissal of the complaint for lack of cause of action in the instant case was basically premised on the procedural rule set forth under Section 2 of Rule 3 of the Rules of Court that every action must be prosecuted and defended in the name of the real party-in-interest and that all persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. Section 2, Rule 3 of the Rules of Court provides, thus:

"SEC. 2. Parties in interest. – Every action must be prosecuted and defended in the name of the real party-in-interest. All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. x x x"

The real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit.[18] "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[19] As a general rule, one having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action.[20]

In the instant case, the recitals of the complaint filed before the lower court seek principally to annul and set aside the Contract of Sale on Installment executed by and between the City Government of Bacolod and Jose Tamayo on May 16, 1961 and in lieu thereof to order the City Government of Bacolod to execute a Contract of Sale on installment in favor of the plaintiffs.[21] The challenge on the validity of the contract of sale on installment is anchored on the allegation that the City Government of Bacolod violated its commitment to award Lot No. 379-B-34 to the plaintiffs therein when it awarded and sold the disputed lot to one Jose Tamayo who is neither qualified to apply for the award nor to purchase the same under the provisions of Ordinance No. 149, Series of 1958.

From the allegations of the complaint, it appears that Isabel Aposaga and Edith Sustiguer jointly claimed that they are qualified and entitled to purchase Lot No. 379-B-34 for the reason that under Section 3, par. (a) of Ordinance No. 149, Series of 1958, they possess the preferential right to buy the same from the City Government of Bacolod, being the "actual occupant or occupants" of the disputed lot. In the same complaint, however, it was disclosed by the plaintiffs that the disputed lot was awarded by the Office of the City Mayor to plaintiff Isabel Aposaga in accordance with Ordinance No. 149, Series of 1958, as stated in the official statement dated November 2, 1960[22] and quoted at the same time in the certificate issued by the Office of the Mayor, dated November 3, 1960 to the effect that Lot No. 379-B-34 is awarded to Mrs. Isabel Aposaga, actual occupant of Lot No. 379-B-34.[23] In other words, on the basis alone of the material and relevant facts pleaded in the complaint, whatever preferential right allegedly claimed by appellant Edith Sustiguer or interest in the award of the disputed lot is contingent upon the final award to and subsequent execution of a contract of sale in favor of Isabel Aposaga by the City Government of Bacolod upon compliance by the former with the requirements of the ordinance.

Records, however, reveal that Isabel Aposaga withdrew her complaint as she is no longer interested in prosecuting her claim over the disputed lot. When the withdrawal of her complaint was allowed by the lower court, the mere allegation of Edith Sustiguer that she has a preferential right to purchase the disputed lot on the basis of the fact that she actually occupied the same together with Isabel Aposaga does not give rise to a cause of action independent from that which has been withdrawn. Appellant Edith Sustiguer cannot claim an interest to protect over the disputed lot as she is not a real party-in-interest who would be benefited or injured by the judgment in the event trial proceeded in the instant case. The interest appellant had, if any, on the disputed lot cannot be

categorized as material interest within the meaning of Section 2, Rule 3 of the Rules of Court considering that it is contingent upon the final execution of the contract of sale on installment in favor of Isabel Aposaga upon compliance with the requirements of Ordinance No. 149, Series of 1958 of the City Government of Bacolod.

Under the facts pleaded in the complaint, it appears with certainty that appellant Edith Sustiguer is not entitled to the relief prayed for, she not being the real party-in-interest. Hence, the dismissal of the complaint for lack of cause of action is proper under the circumstances in the instant case. For, it is well-settled that where the plaintiff is not the real party-in-interest, the ground for the motion to dismiss is lack of cause of action.[24]

Although the ground of lack of cause of action was pleaded by appellee Jose Tamayo as one of his special and affirmative defenses in his answer, the said ground for dismissal of the complaint may be heard preliminarily as if a motion to dismiss had been filed pursuant to Section 5 of Rule 16 of the Rules of Court. Appellee Tamayo took this procedural step by filing on September 16, 1967 a motion for preliminary hearing and thereafter to dismiss the complaint and the complaint in intervention. Records show that instead of a preliminary hearing, the parties filed their respective memoranda on the issue whether or not Edith Sustiguer has a cause of action against the City Government of Bacolod and Jose Tamayo.

When the ground for dismissal is that the complaint states no cause of action, the rule provides that its sufficiency can only be determined by considering the facts alleged in the complaint and no other, the test being whether the court can render a valid judgment from the facts set forth.[25] The rule is that when the motion to dismiss is based on the ground that the complaint states no cause of action, no evidence may be allowed and the issue should only be determined in the light of the allegations of the complaint.[26] Thus it was erroneous for appellant to claim that the lower court should have conducted a trial on the merits instead of dismissing the complaint upon a mere motion.

As ruled by this Court in upholding an order of dismissal where before the trial court issued the questioned order dismissing petitioner's complaint, it had the opportunity to examine the merits thereof, the answer with counterclaim, the petitioner's answer to the counterclaim, and the answer to the request for admission, to determine whether or not there was sufficient cause of action, the order of dismissal was in the nature of a summary judgment.[27]

Neither can appellant claim that she was denied due process since she filed a motion for reconsideration and new trial which the lower court considered upon appellee's filing of his opposition thereto.

On the other hand, if the instant case is viewed from the standpoint of the law on contracts, appellant's theory of sufficiency of cause of action to annul the contract of sale on installment and award of the disputed lot against the City Government of Bacolod and Jose Tamayo would likewise fall, considering that appellant Edith Sustiguer is not a party to said contract of sale. Under Article 1311 of the Civil Code, a contract takes effect between the parties who made it, and also their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. Since a contract may be violated only by the parties thereto as against each other, in an action upon that contract, the real parties-in-interest, either as plaintiff or as defendant, must be parties to said contract. Therefore, a party who has not taken part in it cannot, sue or be sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby.[28] In order that one who is not obligated in a contract either principally or subsidiarily may maintain an action for nullifying the same, the complaint must show the injury that would positively result to him from the contract in which he has not intervened in connection with at least one of the contracting parties.[29]

In the instant case, the allegations in the complaint did not show appellant's relation to or interest in the contract of

sale on installment. Neither has appellant clearly shown the injury that would positively result to her if the contract is not nullified.

WHEREFORE, the appeal is hereby dismissed for lack of merit. The order, dated December 8, 1977, dismissing the complaint for lack of cause of action, as well as the order dated January 20, 1968, denying the motion for reconsideration thereof, are affirmed. No cost.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Record on Appeal, pp. 99-102, Rollo, p. 9.

[2] Ibid., pp. 129-132.

[3] Joint Brief for the Defendants-Appellees, pp. 8-9.

[4] Ibid., pp. 9-10.

[5] Ibid., pp. 1-14.

[6] Record on Appeal, pp. 34-50, Rollo, p. 9.

[7] Ibid., pp. 53-62.

[8] Ibid., pp. 75-77; while the record does not so indicate, it is assumed that Civil Case No. 7512 refers to the unlawful detainer case which was then on appeal before the CFI of Bacolod.

[9] Ibid., pp. 77-79.

[10] Record on Appeal, pp. 79-80, Rollo, p. 9.

[11] Ibid., pp. 80-82.

[12] Ibid., pp. 82-86.

[13] Ibid., pp. 88-98.

[14] Ibid., pp. 99-102.

[15] Record on Appeal, pp. 103-124; Rollo, p. 9.

[16] Ibid., pp. 124-128.

[17] Ibid., pp. 129-132.

[18] Estate of George Litton v. Mendoza, G.R. No. 49120, June 30, 1988; Lee v. Judge Romillo, G. R. No. 60937, May 28, 1988; Subido v. City of Manila, 108 Phil. 462 (1960).

[19] House International Building Tenants Association, Inc. v. Intermediate Appellate Court, 151 SCRA 703 (1987).

[20] 39 Am Jur 858.

[21] Record on Appeal, pp. 13-14, Rollo, p. 9.

[22] Record on Appeal, p. 8, Rollo, p. 9.

[23] Ibid., p. 9.

[24] Regalado, Remedial Law Compendium, Vol. I, Fifth Revised Edition, p. 51; and p. 154, citing *Casimiro v. Roque*, 53 O.G. 8772.

[25] *Aberca v. Ver*, 160 SCRA 590 (1988); *Bacolod-Murcia Milling Co., Inc. v. First Farmers Milling Co., Inc.* 103 SCRA 436 (1981).

[26] *Dimayuga v. Dimayuga*, 96 Phil. 859 (1955); *Ruperto v. Fernando, et al.*, 83 Phil. 943 (1949).

[27] *Marcopper Mining Corp. v. Garcia*, 143 SCRA 179-180 (1986).

[28] *Marimperio Compania Naviera, S.A. v. Court of Appeals*, 156 SCRA 368, 378 (1987); *Coquia v. Fieldmen's Insurance Co., Inc.*, 26 SCRA 178 (1968); *Salonga v. Warner Barnes & Co., Ltd.*, 88 Phil. 125 (1951); *Macias & Co. v. Warner Barnes & Co., Ltd.*, 43 Phil. 155 (1922).

[29] *Ibanez v. Hongkong and Shanghai Banking Corporation*, 22 Phil. 572 (1912).

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