

D.C. GIMENEZ CONSTRUCTION, A SOLE PROPRIETORSHIP OF SPOUSES DOMINDA A. GIMENEZ AND DESIDERIO GIMENEZ, PLAINTIFFS-APPELLEES, VS. SAMUEL G. ENAD AND JOHN DOES, DEFENDANTS-APPELLANTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

On appeal is the Decision[1] dated 27 January 2010, rendered by the Regional Trial Court, 7th Judicial Region, Branch 23 of Cebu City, in Civil Case No. CEB-29432, the fallo of which reads,

“WHEREFORE, based on the foregoing, the court hereby renders judgment ordering the defendants to pay plaintiffs the following:

1. the amount of P1,274,000.00, as crane rentals for the period September 3, 2003 to March 22, 2004;
2. the amount of P30,000.00, as attorney's fees; and
3. the amount of P30,000.00, as litigation expenses.

SO ORDERED.”

THE ANTECEDENTS

On 26 September 2003, Spouses Dominda A. Gimenez and Desiderio Gimenez, sole proprietors of D.C. Gimenez Construction, filed a complaint[2] for “Replevin and Damages” against Samuel G. Enad and John Does, with the Regional Trial Court, docketed as Civil Case No. CEB-29432.

In gist, the complaint alleged that plaintiffs are the owners of one (1) unit Crane, 35 Tonner, in good running and operation condition, Make: P & M Japan (Truck-mounted crane); Engine Nos. UD3-222400 (Crane Side), 01974 (Truck Side); Serial Chassis No. J-4442, which was acquired second-hand on 10 November 1994 per Deed of Sale. That, the crane was leased by a construction company for a period of two (2) months, more or less. That, during the lease period, while the crane was on stand-by with the lessee-construction company, the crane was temporarily withdrawn for lease to defendant Samuel G. Enad (defendant Samuel hereinafter), to commence on September 3, 2003 until September 16, 2003. That, on 20 September 2003, plaintiffs wanted to withdraw the crane from defendant Samuel but to their surprise, defendant Samuel and his men threatened them with bodily harm. That, plaintiffs attempted several times to withdraw the crane but, like before, they were met with the same violent threats. That, defendant Samuel made it known during their confrontation before the barangay captain that he was terminating the verbal agreement they had for the rental of the crane and diesel hammer. That, on the following day, plaintiff Dominda Gutierrez went to defendant Samuel's project site and got the diesel hammer. That, defendant Samuel cannibalized and removed some parts from the crane, including its starter and four (4) outriggers (which support the crane).

The complaint strongly contended that defendants have no right to detain plaintiffs' crane and use it as leverage against them in order to collect their (defendants') supposed claim from them. That, for this wrongful act, defendants should be ordered to deliver the crane to the plaintiffs, together with the starter and the four (4) outriggers and accordingly, be held liable for the rentals of the crane until defendants return it, and for attorney's fee and litigation expenses.

The complaint, likewise, prayed for the issuance of a writ of replevin.

By its Order[3] dated 2 October 2003, the RTC approved plaintiffs' plea for issuance of a writ of replevin.

On 03 October 2003, after approval by the RTC of the bond[4] posted by the plaintiffs, a writ of replevi[5] was issued.

By its Order[6] dated 6 October 2003, the RTC approved the re-delivery bond filed by the defendants.

Plaintiffs filed a motion for reconsideration[7] on the RTC's order approving defendants' re-delivery bond on the ground that it is not among those acceptable under the Rules, which motion was opposed[8] by the defense.

In his Inventory Receipt,[9] Sheriff Benigno B. Reas reported that he already seized the subject crane, complete with its accessories.

By virtue of the re-delivery bond filed by the defendants, Sheriff Benigno B. Reas re-delivered[10] the subject crane to them.

In their Answer with Counterclaim,[11] the defendants denied the material allegations in the complaint. They asserted that what plaintiffs and defendants had was a contract for a piece of work, that is, for the driving of eight (8) reinforced concrete piles for a foot bridge in Jacupan, Talisay City. They claimed that the plaintiffs agreed to finish the job within the maximum period of twelve (12) days, which period already includes allowance for unfavorable weather conditions. The defendants further averred that plaintiffs demanded an advance payment of P70,000.00, to which they acceded. They maintained that although their agreement was verbal, this was confirmed in writing by Engr. Maximo "Boy" Adlawan of D.C. Gimenez Construction. They insisted that the plaintiffs failed to perform their part of the deal because not one pile was driven. They added that what plaintiffs did, instead, was to erect four (4) piles in the square holes, leaving four others lying on the ground. They further contended that plaintiffs refused to comply with the safety and acceptable construction methods prescribed by the Department of Public Works and Highways (DPWH), which refusal resulted to a near fatal accident on September 13, 2003. It was for this reason that the DPWH issued a stop order dated September 15, 2003, which plaintiffs defied.

By way of special and affirmative defenses, defendants alleged, in the main, that plaintiffs have no cause of action against them; and that plaintiffs are not the real parties-in-interest, and even if they are, they failed to implead the real party-in-interest.

Finally, defendants prayed for payment of attorney's fees, moral damages, exemplary damages and actual damages.

Plaintiffs moved[12] to declare defendants in default for failing to file their Answer within the extension period granted by the RTC.

In their Reply[13] to defendants' Answer, plaintiffs averred that the supposed confirmation by Engr. Adlawan is not binding on them as he was not authorized to act and sign for and in their behalf. That, they made it clear in their complaint that defendant Samuel terminated their verbal contract for the lease of the crane and diesel hammer during their confrontation before the barangay captain. Plaintiffs further contended that defendants'

counterclaim has no basis in fact and law. They seek for judgment on the pleadings on the issue of replevin under Section 1, Rule 34 of the Rules of Court, since defendants' Answer failed to tender an issue or admitted the material allegations in the complaint.

By its Order[14] dated 20 November 2003, the RTC granted plaintiffs' Motion for Reconsideration of the October 6, 2003 Order, it being anchored on valid and legal grounds. However, the RTC denied plaintiffs' motion to declare the defendants in default.

By its Order[15] dated 11 March 2004, the RTC, upon motion by the plaintiffs, ordered the defendants to turn over to the plaintiffs the subject crane, within fifteen (15) days from notice.

After the filing by the parties of their respective pre-trial brief, the RTC issued a pre-trial Order,[16] setting forth the following admissions and issues, to wit:

“ADMISSIONS:

- That the plaintiffs are the owners of one (1) unit of crane, 35 tonner;
- That, the crane is the subject of a Lease Contract Agreement with Edgar Mary S. Sarmiento of Cuanos, Minglanilla, Cebu, the owner of Sarmiento Construction, and commencing the 3rd week of June 2003 and used for their projects until the present;
- That, within the effectivity of the Lease Contract, the crane which was supposed to be used by Edgar Mary S. Sarmiento was diverted by the plaintiffs for purposes of the Jaclupan Bridge;
- That, the crane was brought to the construction site at Jaclupan, Talisay City by the plaintiffs' driver and that the latter was the one who held the ignition keys of the crane and the crane itself; and
- That, after the verbal agreement to drive the piles, plaintiffs demanded and received from the defendants the amount of P70,000.00.

ISSUES:

- Whether or not plaintiffs are entitled to the relief prayed for in the complaint; and
- Whether or not defendants are liable for the relief prayed for in the answer.”

Trial ensued. The facts as adduced by the RTC, read,

“Witness presented by the plaintiff was Dominda A. Gimenez who testified, among others, that she knew Edgar Sarmiento since they had a lease contract on June 14, 2003, regarding the crane and the diesel hammer. The period of the lease was for two (2) months but before the contract ended plaintiff Dominda A. Gimenez borrowed the crane and the diesel hammer since Mr. Enad rented these for twelve (12) days at the rate of P1,000.00 per hour each. The crane and the diesel hammer were then brought to the project site at the Mananga River, Jaclupan, Talisay City. A misunderstanding arose when the crane was used at the project site because Mr. Enad wanted the crane to be brought down to the river. She objected because the crane can work efficiently by positioning it on the river bank and there is no need for the crane to be brought down to the river. (tsn-4/13/2005, egfanlo)

Plaintiffs offered the following exhibits which were admitted by the court:

Exh. “A” and submarkings[17] CONTRACT OF LEASE of one (1) crane by D. Gimenez with Edgar Sarmiento;

Exh. "B" and submarkings[18] AFFIDAVIT OF DOMINDA GIMENEZ;

Exh. "C" and submarkings[19] RECEIPT DATED MARCH 19, 2004;

Exh. "D" and submarkings[20] ESTIMATED LOSSES OF PLAINTIFFS.

Defendant Samuel G. Enad was then presented for the defendants, however, because of the many postponements of the defendants and in spite of being notified, plaintiffs moved that the testimony of said witness be expunged from the records which was granted by the court in its order dated February 22, 2006. Defendants filed a Motion for Reconsideration of the said order which was granted by the court on May 18, 2006 and the order dated February 22, 2006, was reconsidered and set aside. The case was then terminated on October 5, 2006 and the cross examination was set on November 21, 2006. For failure of defendant to appear during the cross-examination considering that he was duly notified of the said scheduled date and as prayed for by the plaintiffs, his testimony was expunged from the record and the case was set for the presentation of defendants' other witness. Defendants filed a Motion for Reconsideration and plaintiffs as well filed comment thereto. The court reconsidered its order and set the cross-examination of witness Samuel G. Enad on May 30, 2007. Again, defendant Samuel G. Enad and counsel did not appear on the date despite notice, hence, plaintiffs again moved that defendant Enad's testimony be expunged from the record which was granted by the court and the defendants were ordered to present another witness. Then again a Motion for Reconsideration was filed as well as comments/opposition thereto. On July 26, 2007, the court denied defendants' Motion for Reconsideration for the reason of repeated failure on the part of the defendants to appear on the scheduled hearings despite being notified. On September 6, 2007, was the presentation of defendants' another witness in the person of Marlon (sic) Villamor, however said witness is not available, the hearing was again reset to November 22, 2007. A Motion for Withdrawal as Counsel filed by Atty. Pepito C. Suello with the conformity of his client was granted by the court and Atty. Pepito C. Suello was relieved of his responsibility in connection with this case. On February 14, 2008 hearing was moved for a resetting to give him time to study the record of the case. With the conformity of plaintiff's counsel the hearing was reset to April 1, 2008. When the hearing was conducted on said date, Atty. Mariano Cuenco manifested that his witness was not available and there was a need to subpoena his witness to appear and testify before the court. On the next scheduled hearing on May 23, 2008, Atty. Mariano Cuenco again manifested that his witness was again not available. Atty. Heidi Orbiso, counsel for the plaintiffs did not object provided that would be the last resetting. This court granted the resetting asked by defendants, through counsel, to June 5, 2008 at 10 o'clock in the morning with a warning that the right of the defendants to present their last witness would be considered waived if they could not present said witness on the next scheduled hearing. The court warned the parties that no further postponement shall be entertained when this case was called again on June 5, 2008, at 10 o'clock in the morning plaintiffs and counsel appeared. On the other hand, defendants and counsel Atty. Mariano Cuenco did not appear despite notice, thus, the court ordered that defendants' right to present evidence was deemed waived and both the plaintiffs and the defendants were given thirty (30) days within which to submit it simultaneously memoranda.

On 27 January 2010, the RTC rendered judgment in favor of the plaintiffs, ratiocinating, thus -

"There is no question that the ownership of the crane belongs to the plaintiffs since the crane was already returned by the defendants to the former. Plaintiffs were able to present to the court convincing evidence that warrants their claim for damages and were admitted by the court. These evidence were unopposed and uncontradicted, thus, were given full faith and credence by the court. Among the evidence offered by the plaintiffs that was admitted by the court is the 'Estimated Losses' (x x x) of the plaintiffs which consists of the total number of months and days the crane was in possession of the defendants. On September 3, 2003, the crane was already in the possession of defendant Samuel G. Enad until March 22, 2004, wherein the total

number of days that the crane was in the possession of defendant Samuel G. Enad is one hundred sixty-eight (168) days. As pointed to in the complaint there was a lease of the crane by defendant Samuel Enad who will pay rentals for the crane use at the rate of One Thousand Pesos (P1,000;00) per hour for a period of eight (8) hours a day and for six (6) days a week and that the relation of the parties was rentals of the crane. Hence, 168, the total number of days the crane was in the possession of the defendant, multiplied by P8,000.00 the rate of rental per day would total to One Million Three Hundred Forty-Four Thousand Pesos (P1,344,000.00). Plaintiffs having received the amount of Seventy Thousand Pesos (P70,000.00) as advance payment, this should be deducted from the total amount of the crane rental.

Defendants averred that there exists a contract for a piece of work between plaintiffs and defendant Samuel G. Enad. Plaintiffs agreed to do the job and demanded an advance payment of Seventy Thousand Pesos (P70,000.00) which was right away given. However, these allegations of defendants were not supported by evidence and were not proved in court. Defendants were given ample opportunity and occasion by the court to present their side, however, despite of the generosity of the court of its time, defendants failed to present evidence to support their claim.

Since plaintiffs were constrained to litigate and engaged the services of counsel because of the malicious acts of defendants, plaintiffs are therefore entitled to the claim of attorney's fees and litigation expenses.”[21]

Defendants moved[22] for reconsideration of the 27 January 2010 decision, but the same was denied in the RTC's Order[23] dated 21 May 2010.

Hence, this appeal where defendants now appellants make the following assignment of errors:

“I.

The court a quo committed a reversible error when it rendered judgment in favor of plaintiff-appellees without citing or applying any law or jurisprudence in the decision.

II.

The court a quo committed a reversible error when it rendered judgment in favor of plaintiff-appellees by giving full faith and credence to the evidence of plaintiff-appellees despite the failure of plaintiff-appellees to establish their case by preponderance of evidence:

- a) The court erred when it ruled that the agreement entered into was a lease contract; and
- b) The contract between the parties was a contract for services/piece of work.

III.

The court a quo committed a reversible error when it awarded the amount of Php1,274,000.00 as crane rentals for the period September 3, 2003 to March 22, 2004 without competent proof to justify the award for actual damages.

IV.

The award of damages in favor of plaintiff-appellees violates the principle that he who comes to court must come with clean hands.

V.

The trial court erred in ordering the payment of attorney's fees and litigation expenses.

VI.

The court erred when defendant-appellant Samuel G. Enad was not allowed to present evidence due to technical grounds.”

The arguments of defendant-appellants:

Under Section 12, Article VIII of the 1987 Constitution, “no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based.” In the case at bar, the RTC rendered a decision without expressing the legal basis for the award of damages and attorney's fees. In fact, the RTC did not apply any law or jurisprudence to support its decision. Thus, for this reason alone, the decision rendered herein should be reversed and, the complaint, dismissed accordingly, or in the alternative, remand the case to the RTC for further proceedings.

On another note, plaintiff-appellees failed to prove by preponderance of evidence his cause of action. It may be well to stress that they are charged with the burden to prove their claim by competent evidence and not merely rely on the weakness of defendant-appellants' evidence.

For another, the RTC erred when it ruled that the agreement between plaintiff-appellees and them is a contract of lease. It is worthy of noting that what plaintiff-appellees presented to the court is the lease agreement between plaintiff-appellee Desiderio Gimenez and one Edgar Sarmiento of Sarmiento Construction. This lease agreement has nothing to do with them, hence, cannot be used by the RTC as basis in arriving at its decision. In the absence of any proof that a lease agreement between them and plaintiff-appellees was, indeed, executed, the RTC cannot, therefore, hold and rule that the subject crane was leased by them.

Still for another, plaintiff-appellees had control of the possession and use of the subject crane, and the operator of the said crane is an employee of Sarmiento Construction. These circumstances undisputably belie plaintiff-appellees' contention that they (defendant-appellants) leased the crane. More important is plaintiff-appellees' admission at the pre-trial, which reads, “that after the verbal agreement to drive the piles, plaintiff demanded and received from the defendants the amount of P70,000.00.” Under Section 4, Rule 129 of the Rules of Court, this admission is in the nature of a judicial admission, hence, does not require any proof. Significantly, plaintiff-appellees attached to their complaint a copy of defendant-appellant Enad's letter demanding payment for losses incurred after plaintiff-appellees refused to complete the work they promised to do within a specific period. Verily, these circumstances are enough proof that what they had with plaintiff-appellees was for a piece of work.

Anent the award of damages, there is nothing in the records to justify such award. The RTC relied heavily on the self-serving statements made by plaintiff-appellee Dominda Gimenez. The stenographic notes will clearly show that it was plaintiff-appellees' refusal to follow the safety standards set forth by the DPWH that was the proximate cause for the breach of the verbal contract between them. This circumstance, the RTC failed to consider.

Finally, the RTC deprived them of ample opportunity to present their evidence. Defendant-appellant Samuel G. Enad's failure to appear during his scheduled hearings was for good reasons. In fact, he was able to produce medical certificates to support his absences. As regards defense witness Arthur Villamor, he was subpoenaed once only and his failure to appear was justified, too. More important, defendant-appellants still had other witnesses to present in support of their claims. To stress, “. . . court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret such truth.” (Milagros Simon and Liborio Balatico vs. Guia W. Canlas, G.R. No. 148273, April 19, 2006)

Per verification[24] from the Judicial Records Division on 01 March 2014, no appellees' brief was filed[25] hence, plaintiff-appellees are considered to have waived their right to do so.

In our Resolution[26] dated 27 2013, we noted and admitted the brief filed by defendant-appellants' on 4 June 2012, and simultaneously, submitted the instant case for decision sans appellees' brief.

In their Manifestation dated 29 April 2013, plaintiff-appellees stated that they received a copy of this court's Notice of Resolution, together with a copy of the Resolution promulgated on March 27, 2013.

THE ISSUE

Stripped of non-essentials, the only issue in this instance is whether plaintiff-appellees are entitled to the reliefs prayed for in the instant complaint for replevin and damages.

THE COURT'S RULING

The appeal lacks merit.

Onset,

x x x Tillson v. Court of Appeals discusses the term replevin as follows:

The term replevin is popularly understood as "the return to or recovery by a person of goods or chattels claimed to be wrongfully taken or detained upon the person's giving security to try the matter in court and return the goods if defeated in the action;" "the writ by or the common-law action in which goods and chattels are replevied," i.e., taken or gotten back by a writ for replevin;" and to replevy, means to recover possession by an action of replevin; to take possession of goods or chattels under a replevin order. Bouvier's Law Dictionary defines replevin as "a form of action which lies to regain the possession of personal chattels which have been taken from the plaintiff unlawfully . . . , (or as) the writ by virtue of which the sheriff proceeds at once to take possession of the property therein described and transfer it to the plaintiff upon his giving pledges which are satisfactory to the sheriff to prove his title, or return the chattels taken if he fail so to do; the same authority states that the term, "to replevy" means "to re-deliver goods which have been distrained to the original possessor of them, on his giving pledges in an action of replevin." The term therefore may refer either to the action itself, for the recovery of personality, or the provisional remedy traditionally associated with it, by which possession of the property may be obtain[ed] by the plaintiff and retained during the pendency of the action. (Emphasis and underscoring supplied; citations omitted)

In a complaint for replevin, the claimant must convincingly show that he is either the owner or clearly entitled to the possession of the object sought to be recovered, and that the defendant, who is in actual or legal possession thereof, wrongfully detains the same.[27] (Underscoring ours)

In this instance, ownership of the subject crane is not in dispute. What needs to be determined is whether defendant-appellants wrongfully detained the subject crane.

At this juncture, it may be well to stress that defendant-appellants' claim that plaintiff-appellees had full control of the crane and could have withdrawn it anytime they wanted to is contradicted by their own averment in their Answer, viz -

"x x x But the plaintiff has other agenda in mind. She deliberately refused to fulfill her obligation although she has received earlier cold cash from the defendant to compel the latter to renegotiate with her for another fee of P100,000.00 for the same job on the other side of the river. This is clear bad faith. And the mother of all bad faith is when plaintiff filed this Replevin case and misled the Honorable Court to believe that the defendant was withholding her crane. The truth is this: plaintiff held the ignition keys of the crane and truck and she can move away the crane at any moment she wanted. Nobody could stop them from getting the crane away from

the construction site even without a replevin action. Defendant did not and cannot prevent plaintiff from getting the crane. That's why this suit truly surprises the defendant. The counter-replevin bond put up by defendant is just a way to compel the plaintiff to fulfill her obligation under the contract.”[28] (Underscoring ours)

We cannot subscribe to defendant-appellants' logic on the following grounds,

For one, if defendant-appellants, indeed, did not want to have anything to do with the subject crane then why did they not just deliver it to plaintiff-appellees immediately after the instant complaint was filed?

For another, defendant-appellants do not have any right to the subject crane. Even a mortgagee, who has a right to possess the property subject of the mortgage after default, cannot just seize by force or stealth or any unlawful means the subject property from the mortgagor without going through proper, legal procedure.

Still for another, if defendant-appellants really wanted plaintiff-appellees to fulfill their obligation under the verbal contract, then all defendant-appellants had to do was to sue plaintiff-appellees for specific performance, or, for breach of contract, if fulfillment or performance of the obligation is no longer feasible or practicable, and in either case, pray for damages. Moreso, where, in this instance, defendant-appellants expressed in their letter[29] dated September 19, 2003, addressed to plaintiff-appellee Dominda A. Gimenez, that they already opted to have the job performed by another subcontractor, viz -

“I am writing this letter in behalf of our client, Mr. Samuel G. Enad, regarding your contract for the driving of concrete piles at Jaclupan, Talisay City. The agreed period to complete the driving of the eight (8) concrete piles subject of the contract had already lapsed. Our client informed of your unwillingness to fully perform your obligation under the agreement.

In view of the foregoing, our client opted to look for other subcontractor to fully execute the contract at your expense. In addition, our client will demand from you payment of daily damages from the expiration of the agreed period until the driving of the eight (8) concrete piles is completed by the other subcontractor. Resorting to legal action is a possible option to protect the rights of our client.”

And still for another, it does not change the fact that defendant-appellants deprived plaintiff-appellees of the use of the subject crane for a number of months. In fact, defendant-appellants returned the subject crane to plaintiff-appellees only after the RTC ordered them to do so. The extent of defendant-appellants' possession of the crane is easily discernible from defendant-appellant Samuel's letter[30] dated 19 March 2004, viz -

“I am turning over to you the parts held by me for safekeeping, relative to the court order received yesterday requiring me to turnover the crane to Desiderio and Dominda Gimenez, as follows:

4 sets outrigger stand of crane

2 pcs starter (1 for truck/1 for crane)

The crane is in Jaclupan, Talisay City at exactly the site where they left it. The keys of that crane have long been with them.

Please acknowledge.”

Under the foregoing undisputed circumstances, the conduct of defendant-appellants clearly manifests their deliberate intent to detain the subject crane without any legal right to do so. Thus, effectively depriving the plaintiff-appellees of the enjoyment and benefits of the use of the subject crane.

Hence,

Award of Damages is proper

Under Section 9, Rule 60 of the 1997 Rules of Civil Procedure, as amended, viz -

"Sec. 9. Judgment. - After a trial of the issues, the court shall find in whom is the right of possession and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for the value in case delivery cannot be made, and also for such damages as either party may prove, and for costs." (Underscoring ours)

Doubtless, whether the subject crane was being used or kept on stand-by somewhere by defendant-appellants, plaintiff-appellees, as earlier stated, have been deprived of the enjoyment and use thereof, and additionally, its economic value has been reduced.

It may be recalled, too, that at the time that the subject crane was being used for defendant-appellant Samuel's construction work, it was under a lease contract[31] with another construction company. According to plaintiff-appellees, they promised to return the subject crane to that lessee-construction company on September 16, 2003, but, obviously they were not able to do so on that date because it was in the possession of defendant-appellants. Hence, it is not wrong to say that plaintiff-appellees suffered losses and damages occasioned by the wrongful and unlawful detention by the defendant-appellants of plaintiff-appellees' crane. For this, equity demands that for each day that plaintiff-appellees were denied the benefits, including rightful possession, of their crane, defendant-appellants be made to pay rentals to the extent of their possession thereof.

True, defendant-appellants are not and cannot be bound by the terms and conditions contained in the lease contract between plaintiff-appellees and Sarmiento Construction, nevertheless, the said contract may be introduced to prove the rental rate of the subject crane offered by plaintiff-appellees to other persons.

Defendant-appellants were given
sufficient opportunity to present his case

A perusal of the records will show that:

Defendant-appellant Samuel did not appear on 9 June 2005[32] as he was reportedly indisposed.

Defendant-appellant Samuel, together with his counsel, did not again appear on 7 December 2005,[33] the day he was supposed to be cross-examined. This time, the RTC issued a warning that in the event he fails to appear on said date, his testimony shall be expunged.

Despite the warning, defendant-appellant Samuel failed to appear again at the scheduled hearing on 22 February 2006,[34] for which reason, the RTC ordered to expunge his testimony.

Upon motion (attached thereto is a medical certificate[35]) by defendant-appellants, over the opposition of plaintiff-appellees' counsel, the RTC reconsidered its Order and accordingly, granted defendant-appellants' motion for reconsideration.[36]

Defendant-appellant Samuel again failed to appear for the continuation of his cross-examination on 21 November 2006.[37] For this, his testimony was, again, expunged. Defendant-appellants filed a motion for reconsideration, attaching thereto a medical certificate.[38] Expectedly, plaintiff-appellees opposed this motion. The RTC granted defendant-appellants' motion for reconsideration, and set defendant-appellant Samuel's cross-examination on May 30, 2007.[39]

Defendant-appellant Samuel and his counsel did not again appear at the 30 May 2007 setting. [40] Again, the RTC ordered his testimony to be stricken off the record.

In denying[41] defendant-appellants' motion for reconsideration, the RTC ratiocinated, thus,

"Verily, in numerous occasions, this Court has relaxed the rigid application of the rules to afford the parties the

opportunity to fully ventilate their case on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.

However, such liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. It is equally settled that, save for the most pervasive of reasons, strict compliance is enjoined to facilitate the orderly administration of justice. (*Eastland Construction & Development Corp. vs. Benedicto Mortel*, G.R. No. 165648, March 23, 2006)

In the instant case, record would readily reveal that witness Samuel Enad and his counsel, despite due notice and leniency of the court, failed and repeatedly failed to appear on the scheduled hearings. This case was postponed five (5) times at the instance of the defendants compared to plaintiffs who religiously attended all the scheduled hearings of this case.”

We agree with the RTC.

Defendant-appellant Samuel failed to appear not once or twice but five times. It does not escape the mind of this court that the RTC, in the interest of substantial justice, twice reconsidered its Orders expunging defendant-appellant Samuel's testimony from the records. Despite the RTC's leniency, defendant-appellant Samuel still failed to appear. True, defendant-appellants presented two (2) medical certificates to justify defendant-appellant Samuel's absences, to wit:

The first medical certificate[42] was issued by a neurological surgeon, Dr. Amado M. Layno of Cebu Doctors' Hospital on March 27, 2006, wherein shows that defendant-appellant Samuel was examined on May 17, 2004 after complaining “of severe low back pain with difficulty of walking for 7 days.” Dr. Layno recommended bed rest for 1-2 weeks, among others.

The second medical certificate[43] was issued by a pathologist, Dr. Primo Joel S. Alvez of Vicente Sotto Memorial Medical Center, on November 20, 2006. In this certificate, Dr. Alvez stated that defendant-appellant Samuel complained of low pain, moderate to severe and recommended that the latter rest for five (5) days starting on November 20, 2006.

but an analysis of these medical certificates vis-a-vis defendant-appellant Samuel's absences reveals, that,

Based on the first medical certificate, if we have to count seven (7) days from the day defendant-appellant Samuel was examined by Dr. Layno, he started to experience severe low back pain on May 10, 2004. The records will show that defendant-appellant Samuel did not appear on these dates: June 9, 2005, December 7, 2005 and February 22, 2006. Quite interestingly, the days defendant-appellant Samuel was suffering from severe back pain and resting per advice of his doctor do not coincide with the days he was supposed to appear in court for his testimony.

Anent the second medical certificate, it shows that defendant-appellant Samuel was, indeed, indisposed on November 20, 2006 setting. But there was no medical certificate to justify his absence at the May 30, 2007 setting.

More important, there is nary any evidence to suggest how long defendant-appellant Samuel's sickness made him indisposed or prevented him from appearing at the scheduled trials. Not even the medical certificates that the

defense produced can satisfactorily explain his failure to appear or his claim of sickness on the dates he was supposed to appear in court, except on November 20, 2006.

Anent defense witness Arthur Villamor, his testimony was supposed to be presented on 6 September 2007, but he failed to appear. Upon motion by the defense counsel, the RTC subpoenaed[44] Arthur Villamor to appear before the RTC on 23 May 2008. But when this day came, Arthur Villamor did not appear as he was not available.[45] So, the RTC re-set the hearing to June 5, 2008. Again, the RTC subpoenaed[46] Arthur Villamor to appear before the RTC on 5 June 2008, but he did not.

Although witness Arthur Villamor wrote[47] Clerk of Court Marylou A. Enjambre on 3 June 2008, to inform her that he could not appear on the 5 June 2008 scheduled hearing as he has already made prior commitments, the defense counsel, without waiting for any action from the RTC, did not bother anymore to appear on 5 June 2008. For this, the RTC issued an Order[48] stating that defendant-appellants' right to present evidence is deemed waived and directing the parties to simultaneously file their respective memorandum. Yes, the defense counsel filed an urgent motion[49] dated June 5, 2008, to cancel the June 5, 2008 hearing but the motion was received by the RTC only on June 12, 2008, as it was filed by registered mail.[50]

Defendant-appellants claim in their appeal brief that they still have other witnesses to present.[51] However, as can be inferred from the Order[52] dated 23 May 2008, witness Arthur Villamor is the last witness for the defense, viz -

“When this case was called, Atty. Mariano Cuenco appeared and manifested that he is supposed to present the last witness for the defendant. The said witness is not available this morning. x x x.”

Under all the circumstances, this court holds and so rules that the RTC was justified in expunging defendant-appellant Samuel's testimony from the records and to consider the defense as to have waived the presentation of witness Arthur Villamor's testimony. Needless to state, the courts and the adverse party, should not be held hostage to the other party's whims and caprices. Hence, defendant-appellants' claim that they were denied ample opportunity to be heard must fail and so with their alternative prayer to remand.

One final note

Based on the pre-trial Order[53] issued by the RTC, there is an admission “that after the verbal agreement to drive the piles, plaintiff demanded and received from the defendants the amount of P70,000.00.” So that it was error for the RTC to rule that,

“Defendants, averred, that there exist (sic) a contract for a piece of work between plaintiffs and defendant Samuel G. enad. Plaintiffs agreed to do the job and demanded an advance payment of Seventy Thousand pesos (P70,000.00) which was right away given. However, these allegations of defendants were not supported by evidence and were not proved in court. Defendants were given ample opportunity and occasion by the court of its time, defendants failed to present evidence to support their claim.”

It is basic in our jurisdiction that the admissions/stipulations and issues contained in the pre-trial Order control the course of the trial; and that the parties therein are bound thereby. “The admissions of the parties during the pre-trial as embodied in the pre-trial order of the court are binding and conclusive on them, unless there is a clear showing that the admission was entered through palpable mistake. Such admissions cannot be contradicted by the parties.”[54] In this instance, plaintiff-appellees have not shown that their admission re: contract with defendant-appellants was tainted by palpable mistake. Needless to say, the Pre-Trial order clearly shows the nature of the contract between plaintiff-appellees and defendant-appellants.

Regardless, in actions for replevin, two things must be duly proved and these are: (1) that the plaintiff owns or has

legal right to possess the property to be replevied; and (2) that the defendant wrongfully detains the said property. In this instance, plaintiff-appellees have proven that they are the absolute owners of the subject crane. Additionally, the records will also show that defendant-appellants detained the subject crane without any legal right to do so. Therefore, sans any right, it is not amiss to say that defendant-appellants' act of unlawfully detaining the subject crane constitutes unjust enrichment. It is settled "x x x that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience." [55] (Underscoring ours)

In light of the foregoing discussion, defendant-appellants are held liable for payment of rentals for the period the subject crane was in their possession until it was delivered to plaintiff-appellees. The reckoning date of possession by defendant-appellants should be from 26 September 2003, as it was when plaintiff-appellees formally demanded the return of the crane, until 19 March 2004, the date defendant-appellants turned-over the subject crane and the starter and outriggers to plaintiff-appellees. Thus, counting from 26 September 2003 to 19 March 2004, less holidays and Sundays, the subject crane was in the possession of defendant-appellants for only 145 days.

Finally, this court sustains the RTC's award of attorney's fees and costs of litigation. In this instance, plaintiff-appellees were compelled to litigate to protect their rights. The plaintiff-appellees would not have gone through the trouble and rigors of trial, or, this case would not have reached this court if only defendant-appellants delivered the subject crane to plaintiff-appellees immediately after the instant complaint was filed. Defendant-appellants have nobody to blame but themselves.

WHEREFORE, the appeal is DISMISSED, the Decision dated 27 January 2010 rendered by the Regional Trial Court, 7th Judicial Region, Branch 23, Cebu City in Civil Case No. CEB-29432 is hereby AFFIRMED with the modification reducing the amount of actual damages in the form of rentals to be paid by defendant-appellants to Php1,090,000.00 (145 days x P8,000.00/rate of rental per day – [P70,000.00]).

SO ORDERED.

Lagura-Yap, & Quijano-Padilla, JJ., concur.

[1] Original Records, pp. 215-219.

[2] Original Records, pp. 1-8. With Annexes.

[3] Original Records, p. 18.

[4] WB-JCL (13) – 01309, issued by the Commonwealth Insurance Company, Original Records, pp. 21-22.

[5] Original Records, p. 19.

[6] Order dated 6 October 2003, Original Records, p. 26.

[7] Original Records, pp. 28- 31.

[8] Comment/Opposition to Motion for Reconsideration, Original Records, pp. 38-39.

[9] Original Records, p. 34.

[10] Re-Delivery Receipt dated October 6, 2003, Original Records, p. 35.

[11] Original Records, pp. 42-47.

- [12] Original Records, pp. 48-49.
- [13] Original Records, pp. 50-56.
- [14] Original Records, p. 59.
- [15] Original Records, p. 71.
- [16] Dated 02 June 2004, Original Records, p. 81.
- [17] Folder of Exhibits, pp. 3-4.
- [18] Folder of Exhibits, pp. 5-6.
- [19] Folder of Exhibits, p. 7.
- [20] Folder of Exhibits, p. 8.
- [21] Page 4 of the RTC decision, Original Records, p. 218.
- [22] Original Records, pp. 221-231.
- [23] Original Records, p. 235.
- [24] At the back of page 44, Rollo.
- [25] Ibid.
- [26] Stapled to the back cover of the Rollo.
- [27] Superlines Transportation Company vs. Philippine National Construction Company, et. al., G.R. No. 169596, March 28, 2007. Citing (David S. Tillson v. Court of Appeals) G.R. No. 89870, May 28, 1991, 197 SCRA 587; and Distilleria Washington, Inc. vs. Court of Appeals, 331 Phil. 622 (1996) and Twin Ace Holdings Corporation vs. Rufina and Company, G.R. No. 160191, June 8, 2006, 490 SCRA 368.
- [28] Original Records, pp. 44-45.
- [29] Original Records, p. 13.
- [30] Exhibit "C", Folder of Exhibits, p. 7.
- [31] Exhibit "A", Folder of Exhibits, p. 3.
- [32] Order dated June 9, 2005, Original Records, p. 104.
- [33] Order dated December 7, 2005, Original Records, p. 112.
- [34] Order dated February 22, 2006, Original Records, p. 116.
- [35] Original Records, p. 124.
- [36] Order dated May 18, 2006, Original Records, p. 125.
- [37] Order dated November 21, 2006, Original Records, p. 131.
- [38] Original Records, p. 135.
- [39] Order dated March 21, 2007, Original Records, p. 142.
- [40] Order dated May 30, 2007, Original Records, p. 144.

- [41] Order dated July 26, 2007, Original Records, pp. 157-158.
- [42] Original Records, p. 124.
- [43] Original Records, p. 136.
- [44] Original Records, p. 174.
- [45] Order dated May 23, 2008, Original Records, p. 175.
- [46] Original Records, p. 178.
- [47] Original Records, p. 179.
- [48] Original Records, p. 181.
- [49] Original Records, pp. 182-183.
- [50] Mail Envelope, Original Records, p. 186.
- [51] On page 27, Appeal Brief, Rollo, p. 39.
- [52] Original Records, p. 175.
- [53] Original Records, p. 81.
- [54] Heirs of Ernesto V. Conahap, namely: Nerre D. Gancino-Conahap, et. al. vs. Heirs of Prosperador Regana, namely: Milagros Regaña, et. al., G.R. No. 152021, May 17, 2005. Citing Section 4, Rule 129, Revised Rules of Evidence and Marmont Resort Hotel Enterprises vs. Guiang, G.R. No. L-79734, December 8, 1988, 168 SCRA 373 & Bunag vs. Court of Appeals, G.R. No. L-39013, February 29, 1988, 158 SCRA 299.
- [55] Car Cool Philippines, Inc. vs. Ushio Realty and Development Corporation, G.R. No. 138088, 23 January 2006, 479 SCRA 404.

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