ENGR. RUBEN R. RAMIREZ, PLAINTIFF-APPELLANT, VS. NELSON I. MANZANERO, CRISOSTOMO M. CRUZ, EDGARDO E. CRUZ & AURORA E. FORMILLEZA, DEFENDANTS-APPELLEES.

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an Appeal brought by Ruben R. Ramirez from the Order[1] dated December 12, 2011 dismissing his Complaint for Damages and Order[2] dated February 8, 2012 denying his Motion for Reconsideration, issued by the Regional Trial Court (RTC) Branch 13 of Ligao City in Civil Case No. 2638.[3] The facts of the case follow.

In his Complaint,[4] plaintiff-appellant Ruben R. Ramirez alleged that he and defendants-appellees Nelson I. Manzanero (hereinafter referred to as “Nelson”), Crisostomo M. Cruz, Edgardo E. Cruz, and Aurora E. Formilleza (hereinafter collectively referred to as “defendants-appellants”) were all members of Zone 8 Council of Pilar Village Homeowners Association, Inc. (PVHAI) of Las Piñas City. Plaintiff-appellant claimed that he ceased to be a member of PVHAI on September 10, 2010 when he transferred his permanent residence to No. 077 San Roque Street, Barangay Dunao, Ligao City.

Plaintiff-appellant was a member of Zone 8 Council from July 2003 to June 2005. He was elected Chairman of Zone 8 Council and became a member of PVHAI Board of Directors (BOD) from July 2005 to June 2007. As Zone 8 Council Chairman and member of PVHAI BOD, his duties and responsibilities included: (a) managing the affairs of Zone 8 Council, (b) representing Zone 8 Council in all meetings of PVHAI BOD, and (c) receiving monies from PVHAI as shares from the income of the association to be spent for the projects of Zone 8 Council with the corresponding duty to render an accounting thereof to PVHAI.

Plaintiff-appellant alleged that he has accounted for all the monies received from PVHAI for the period from July 2003 to June 2005. However, for the period from July 2005 to June 2007, some of the documents of Zone 8 Council were misplaced. But while he was in the process of looking for the records and reconciling the monies received from PVHAI, defendants-appellees sent him a memo on June 5, 2008, without authority from the PVHAI BOD, advising him of his removal from PVHAI by impeachment due to failure to liquidate P101,630.00.

On August 20, 2008, plaintiff-appellant executed an affidavit explaining the monies received by and expenses of Zone 8 Council, which was duly noted by the Assistant Village Administrator and the Village Administrator. Despite his explanation, defendants-appellees brought the matter to the Lupon Barangay which had no jurisdiction over the case and secured the services of a lawyer who wrote him demanding an accounting of only P65,785.00 instead of P101,630.00, a clear indication that defendants-appellees were not sure how much was his accountability. Since he had already submitted his affidavit to PVHAI and believed that defendants-appellees did not have the authority to demand an accounting from him, plaintiff-appellant did not bother to answer the demand letter sent by defendants-appellees' lawyer.

Plaintiff-appellant further claimed that to harass him, defendants-appellees instituted an Estafa case for nine (9) counts against him without authority from PVHAI BOD. He maintained that the filing of the case was malicious

since the incidents thereof merely involved an accounting of the monies received by him from PVHAI and not a misappropriation of PVHAI funds. Plaintiff-appellant also maintained that defendants-appellees perjured themselves when they executed their respective affidavits and made untruthful statements that he misappropriated P101,630.00 and, in a later claim, reduced the amount to P65,785.00.

According to plaintiff-appellant, only P12,885.00 of the P65,785.00 remained unaccounted for, representing the misplaced expense records and receipts, and as a sign of good faith, he returned the balance of P12,885.00 to the PVHAI Treasurer on January 12, 2011 since he could no longer locate the missing records and receipts.

As to the nine (9) counts of estafa filed by defendants-appellees, plaintiff-appellant claimed that the Investigating Prosecutor found probable cause for only one count, which resolution of the Investigating Prosecutor he had questioned through a Petition for Review with the Department of Justice. The Petition was pending at the time the Complaint was filed.

Imputing bad faith on the part of defendants-appellees, plaintiff-appellant alleged that they secured a copy of the Warrant of Arrest issued against him and furnished a copy thereof to the Department of Foreign Affairs (DFA), Bureau of Immigration (BI), Professional Regulation Commission (PRC), and the Parish Priest of Pilar Village. Plaintiff-appellant alleged that defendant-appellee Nelson even showed a copy of the warrant of arrest to the tricycle drivers of Pilar Village and told them that he will be arrested for the crime of Estafa.

Citing Articles 19, 20, 21, and 2176 of the Civil Code, plaintiff-appellant filed the Complaint for Damages claiming that defendants-appellees failed to act with justice, did not observe honesty and good faith, and prayed for moral damages of P2,000,000.00, exemplary damages of P300,000.00, litigation expenses of P300,000.00, and costs of suit.

In their Answer,[5] defendants-appellees claimed that nine (9) checks dated from November 21, 2005 to April 18, 2007 were issued by PVHAI in the name of plaintiff-appellant as trustee for Zone 8 Council but no cash was remitted to the Zone 8 Council Treasurer. For failure of plaintiff-appellant to account for the monies represented by the said checks, they filed an action for nine (9) counts of Estafa against plaintiff-appellant before the Prosecutor's Office of Las Piñas City. Contrary to plaintiff-appellant's allegation, the nine (9) complaints for Estafa were consolidated into one case and was filed on February 15, 2010 before the RTC of Las Piñas City, Branch 202, docketed as Criminal Case No. 10-0134, entitled “People v. Ruben Ramirez.” (hereinafter referred to as the “Estafa case.”)

Defendants-appellees denied that they furnished a copy of the Arrest Warant issued against plaintiff-appellant to the DFA, BI, PRC and other offices, maintaining that, in any case, an order of arrest issued by the court is part of public record and no person can be prohibited from showing a copy thereof to anyone, particularly when the person against whom it is issued is evading arrest, as in plaintiff-appellant's case.

Defendants-appellees moved for the dismissal of the Complaint on grounds of improper venue, that the Complaint does not state a cause of action, and for violation of the rule on non-forum shopping.

Raising the issue of improper venue, defendants-appellees pointed out that plaintiff-appellant's act of filing the present action in Ligao City, knowing fully well that all parties thereto, including plaintiff-appellant himself, are actually residing at Zone 8, Pilar Village, Las Piñas City, is in violation of the rule on venue of personal actions such as the instant case. Defendants-appellees maintained that plaintiff-appellant actually resides at No. 3 Dangkalan Road, Zone 8, Pilar Village, Las Piñas City, where his family has lived in their residential house even up to the time of the filing of the Complaint. Defendants-appellees alleged that plaintiff-appellant only claimed to have transferred his residence to Ligao City as of September 10, 2010 to justify the filing of the Complaint in

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RTC Ligao.

Defendants-appellees also maintained that the Complaint does not state a cause of action and posited that the allegations of plaintiff-appellant, to wit: (1) issuance by defendants-appellees of memo for plaintiff-appellant's removal or impeachment; (2) bringing the matter to the Lupon Barangay and to defendants-appellees' lawyer; (3) instituting nine (9) cases of Estafa against plaintiff-appellant without authority from PVHAI BOD; (4) Nelson's act of showing a copy of the Warrant of Arrest against plaintiff-appellant to tricycle drivers of Pilar Village; (5) furnishing a copy of the Warrant of Arrest against plaintiff-appellant to the DFA, BI, PRC and parish priest of Pilar Village church; even if admitted to be true, do not constitute a valid cause of action.

Lastly, defendants-appellees raised the issue that plaintiff-appellant violated the rule against forum-shopping when he deliberately and willfully failed to disclose in his certification against forum-shopping that a criminal complaint for estafa filed against him, involving the same parties and incidents of this case, was already pending before RTC Las Piñas at the time he filed the Complaint.

By way of counterclaim, defendants-appellees sought moral damages of no less than P4,000,000.00, exemplary damages of no less than P2,000,000.00, and litigation expenses of no less than P200,000.00.

The facts admitted by the parties during the pre-trial are summarized in the court a quo's Pre-Trial Order[6] dated September 23, 2011, viz.:

> For plaintiff-appellant: (1) the filing of 9 counts of Estafa by defendants-appellees against plaintiff-appellant at the Office of the City Prosecutor of Las Piñas City is not supported by resolution from PVHAI BOD.
>
> For defendants-appellees: (1) Plaintiff-appellant is a registered voter of Barangay Pilar, Las Piñas City; (2) Plaintiff-appellant's letter allegedly transferring his residence to Ligao City on September 10, 2010 was caused to be received with the Chairman of PVHAI on January 5, 2011; (3) Plaintiff-appellant, before he left Zone 8, Pilar Village, Las Piñas on September 10, 2010 as alleged, was a member of the Ministry of Lectors and Commentators of Our Lady of Pilar Parish, Pilar Village, Las Piñas City; (4) Plaintiff-appellant, despite allegation that he has already transferred his residence on September 10, 2010, still served as commentator and lector of the Parish of Pilar in September 2010, October 2010 and November 2010; (5) initially, 9 counts of Estafa cases were filed before the Prosecutor's Office but only one was filed before RTC Las Piñas.

Dismissing the Complaint, the court a quo issued its Order dated December 12, 2011, the decretal portion of which reads:

> WHEREFORE, premises considered, the above-entitled case is hereby DISMISSED, without prejudice, on the grounds of improper venue and irregular certification against forum-shopping.
>
> SO ORDERED.

Plaintiff-appellant's Motion for Reconsideration was denied by the court a quo in its Order dated February 8, 2012, to wit:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED.

Aggrieved, plaintiff-appellant Ruben interposed the instant Appeal on the ground that the court a quo gravely erred in dismissing the case for irregular certification against forum-shopping and improper venue.

We resolve to deny the Appeal.

At the onset, an overall assessment of the facts and circumstances that led to the filing to the Complaint for

damages reveals that plaintiff-appellant's main cause of action for damages is malicious prosecution. To test the sufficiency of the facts to constitute a cause of action, all the facts alleged in the Complaint are hypothetically admitted.[7] Plaintiff-appellant alleges that he is entitled to damages for the following acts of defendants-appellees: (1) issuance of memo for his removal from PVHAI without authority from the BOD, for his failure to liquidate the monies he received; (2) bringing the matter to the Lupon Barangay and to their lawyer; (3) instituting nine (9) cases of estafa without authority from PVHAI BOD; (4) showing a copy of the arrest warrant to the tricycle drivers of Pilar Village and telling them that plaintiff-appellant will be arrested; and (5) furnishing a copy of the arrest warrant to the DFA, BI, PRC and Parish Priest of Pilar Village Church. However, even if these allegations are hypothetically admitted, We find that such acts find their cause in plaintiff-appellant's failure to fully account for the monies entrusted to him which in turn gave rise to the Estafa case instituted against him by defendants-appellees. Ostensibly, plaintiff-appellant's allegations boil down to his claim for malicious prosecution and the other causes of action alleged in the Complaint are merely peripheral thereto.

That this is a Complaint for malicious prosecution is bolstered by the fact that plaintiff-appellant filed the Complaint for damages only on January 24, 2011, after he was arraigned for the Estafa case on September 29, 2010. Plaintiff-appellant claims that to harass him, defendants-appellees maliciously instituted an action for nine (9) counts of Estafa against him[8] and that for such willful, capricious and whimsical act of defendants-appellees, he is entitled to recover moral damages.[9] Where allegations in the Complaint, as in this case, clearly deal mainly with the criminal complaint previously instituted by the defendant-appellee against the plaintiff-appellant,[10] the action is one based on malicious prosecution.

The term “malicious prosecution” has been defined as “an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein.”[11] The requisites for an action for damages based on malicious prosecution are: (1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action was finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) the prosecutor was actuated or impelled by legal malice.[12] The pendency of the Estafa case when the Complaint was filed is undisputed. Thus, the Estafa case has not yet been terminated and, in view of the arraignment of the plaintiff-appellant, there is clearly no basis to find that the prosecutor acted without probable cause. As it stands, the Complaint for malicious prosecution was prematurely filed and the same must fail.

Forum shopping is a deplorable practice of litigants of resorting to two different fora for the purpose of obtaining the same relief, to increase his or her chances of obtaining a favorable judgment. What is pivotal to consider in determining whether forum shopping exists or not is the vexation caused to the courts and the parties-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or fora upon the same issues.[13] In this case, the filing of the Complaint for malicious prosecution creates the possibility of conflicting decisions by RTC Ligao and RTC Las Piñas. In the event that RTC Ligao decides in favor of plaintiff-appellant in the action for damages, the same necessarily includes a finding that the Estafa case was filed without probable cause. Consequently, a decision by RTC Las Piñas against plaintiff-appellant in the Estafa case will be in direct conflict with such decision of RTC Ligao. Thus, We find no error on the part of the court a quo when it ruled that the Estafa case is deemed a “similar action” or “other pending action” which is closely related or intertwined with plaintiff-appellant's Complaint for malicious prosecution and plaintiff-appellant's failure to mention the pendency thereof merits the outright dismissal of the Complaint.[14]

Anent the issue of improper venue, Section 2, Rule 4 of the 1997 Rules of Civil Procedure is in point, viz.:

> Section 2. Venue of personal actions. - All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

However, as elucidated by the Supreme Court in Baritua vs. Court of Appeals:[15]

> Section 2 (b) of Rule 4 speaks of the place where the defendant or the plaintiff "resides." We have held that the residence of a person must be his personal, actual or physical habitation or his actual residence or abode. It does not mean fixed permanent residence to which when absent, one has the intention of returning. The word "resides" connotes ex vi termini "actual residence" as distinguished from "legal residence" or "domicile." Actual residence may in some cases be the legal residence or domicile, but for purposes of venue, actual residence is the place of abode and not necessarily legal residence or domicile. Actual residence signifies personal residence, i.e., physical presence and actual stay thereat. This physical presence, nonetheless, must be more than temporary and must be with continuity and consistency. (Emphasis supplied.)

In other words, while the choice of venue is given to the plaintiff-appellant, it is not left to his caprice.[16] It must be remembered that the purpose of procedure is not to restrict the court's jurisdiction over the subject matter but to give it effective facility “in righteous action,” “to facilitate and promote the administration of justice” or to insure “just judgments” by means of a fair hearing. If the objective is not achieved, then “the administration of justice becomes incomplete and unsatisfactory and lays itself open to criticism.”[17]

Here, it is clear that plaintiff-appellant deliberately filed the Complaint in Ligao City to harass defendants-appellees. The court a quo correctly pointed out that both parties are residents of Pilar Village in Las Piñas City and the incidents which gave rise to the Complaint all transpired in Las Piñas City. Even the Estafa case was filed, and was still pending, before RTC Las Piñas. As extensively explained by the court a quo:

> Contrary to plaintiff's claims, the court finds that his alleged transfer of residence to his hometown in this City of Ligao when he filed this case on January 24, 201[1], is not genuine and inspired by legitimate motives. The alleged “two (2) major construction projects awarded to him by friends and co-professionals in the Bicol Region” which compelled him to transfer residence to Ligao City was not even shown to the court as factual and not imaginary. Moreover, plaintiff's alleged transfer of residence appeared sudden and coincidental with the filing of the estafa case against him in Las Piñas City. Despite defendants' serious challenge to the improper venue of this case, plaintiff merely cited his letter dated September 10, 2010 to the President of Pilar Homeowners informing the latter of his “desire to reside permanently in my hometown and birthplace in Ligao City (Albay) effective immediately.” However, the same letter reveals that it was given to the addressee only on January 5, 2011. Other than this, the other documents were all issued to plaintiff after the date of the preparation of his complaint on January 12, 2011. Exhibit “F”, the letter to the Parish Priest of Pilar Parish does not also bear the date when it was received by the latter. Finally, his voting records (Exhibit 1) from Las Piñas City, showed that he still voted in the October 25, 2010 (Barangay and SK Elections) elections.[18]

Since it is fundamental that the situs for bringing real and personal civil actions is fixed by the rules to attain the greatest convenience possible to parties litigants and their witnesses by affording them maximum accessibility to the courts of justice,[19] We likewise find no reversible error on the part of the court a quo when it ruled that in this case, not only do the parties appear to be actual residents of Las Piñas City, but the witnesses and the material documents to be presented during trial are kept in said place. Certainly, for the court a quo to assume the case would unduly cause inconvenience, delay, and defeat the salutary purposes of the rule on venue.[20]

WHEREFORE, the instant appeal is DENIED for lack of merit. The order of dismissal of Civil Case No. 2638 is hereby AFFIRMED.

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SO ORDERED.

Zalameda and Reyes-Carpio,[*] JJ., concur.

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[*]Acting Junior Member vice J. Diy per Office Order No. 283-14-ABR dated June 16, 2014.

[1] Rollo, pp. 27-32.

[2] Rollo, pp. 33-34.

[3] Entitled “Engr. Ruben Ramirez v. Nelson I. Manzanero, Crisostomo M. Cruz, Edgardo E. Cruz, and Aurora E. Formilleza.”

[4] Rollo, pp. 35-102.

[5] Rollo, pp. 103-141.

[6] Rollo, pp. 181-182.

[7] Nadela vs. City of Cebu, G.R. No. 149627, September 18, 2003 citing Heirs of Kionisala vs. Heirs of Honorio Dacut, G.R. No. 147379, February 27, 2002.

[8] Page 5 of Complaint, rollo, p. 39.

[9] Page 9 of Complaint, rollo, p. 43.

[10]Otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994."

[11] Yasoña vs. De Ramos, G.R. No. 156339, October 6, 2004 citing Moreno, Philippine Legal Dictionary, 3rd ed., 1988, p. 25.

[12] Bayani vs. PECO, G.R. No. 139680, April 12, 2000 citing Lao vs. CA, 199 SCRA 58, 61 (1991).

[13] Guevara vs. BPI Securities Corporation, G.R. No. 159786, August 15, 2006.

[14] Rollo, pp. 28-29.

[15] G.R. No. 100748, February 3, 1997.

[16] Baritua vs. Court of Appeals, G.R. No. 100748, February 3, 1997 citing Esuerte vs. Court of Appeals, 193 SCRA 544 (1991).

[17] Esuerte vs. Court of Appeals, G.R. No. 53485, February 6,1991 citing Manila Railroad Co. vs. Attorney General, 20 Phil. 523, 530.

[18] Rollo, p. 31.

[19] Baritua vs. Court of Appeals, G.R. No. 100748, February 3, 1997 citing Koh vs. Court of Appeals, 70 SCRA 304305 (1976).

[20] Rollo, p. 31.

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