

**DENNIS, FERDINAND AND JOHN, ALL SURNAMED QUING,
PLAINTIFFS-APPELLANTS, US. MELY CAPATAN, LUCIDA VILLAPAS,
JOSE ANDES, LENIE MENDOZA, CRIS DOULITTLE, LAURENCE
DEMORTE, MA. TERESA...**

CV No. 85066, November 29, 2007

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Court of Appeals

Before Us is an appeal of the final Order[1] of the Regional Trial Court of the City of Malabon, Branch 170, dated 27 April 2005, dismissing the complaint in Civil Case No. 4392-MN for lack of cause of action. The dispositive portion of said Order needs:

"Wherefore, the instant complaint is hereby dismissed for lack of cause of action."[2]

On 7 February 2005, plaintiffs-appellants filed a Complaint (With Application for TRO and/or Writ of Injunction) for Specific Performance, Prohibition and Injunction, containing the following allegations:[3]

* * * * *

2 - That the plaintiffs are the common and registered owners and in actual physical possession and enjoyment of that certain commercial and residential parcel of land known as Lot No. 3-D-3-C of the Subdivision Plan, situated at 27 Yanga Street, Maysilo, Malabon, M.M. Containing an area of ONE THOUSAND FOUR HUNDRED SIXTY FOUR (1,464) SQUARE METERS, more or less, covered by and embraced in TCT No. M-10298, a copy of which is hereto attached as Annex "A", issued by the Register of Deeds of Malabon, M.M. Which is more particularly described as follows:

* * * * *

where they actually reside and conduct their business or manage their factory for the production of feed meals for commercial purposes and where their various equipments (sic) vehicles and different kinds of merchandise and/or articles of value are stored or stacked, plan and/or Sketch of the above property is shown in Annex "B" hereof.

3 - That, as indicated under Annex "B" hereof, all the defendants are the owners and/or in possession of and have their respective houses where they reside in, separate parcels of land that are adjacent to, an/or abut, above-described property of the herein plaintiffs who, themselves also have their respective residential houses; however, the defendants berting mendoza, ma. TERESA YUMUL, ROMERO FRANSISCO, GERRY LLANTO, buddy tan, ernesto suerte, in particular, have constructed fences and enclosed their respective residential lots, more than One (1) Year Ago, intruding, encroaching and occupying portions of the plaintiffs' above-described property, to the extent, as follows:

BERTING MENDOZA = 9.88 Square Meters.

MA. THERESA YUMUL = 7.8 Square Meters.

ROMERO FRANSISCO = 6.88 Square Meters.

GERRY LLANTO = 7.99 Square Meters.

BUDDY TAN = 11 Square Meters.

ERNESTO SUERTE = 16.88 Square Meters.

and, despite repeated demands, the above-named defendants had refused, failed and refused to remove their fences and refuse to transfer the same on the boundary line between plaintiffs and said defendants' property in the manner, and as portrayed and demonstrated, in a Relocation (sic) Survey Plan which herein plaintiffs had caused to be conducted by a competent Geodetic Engineer, in the premises, a copy of which is hereto attached as Annex "C", copies of plaintiffs' written demands upon the said defendants are hereto attached as Annexes "D", "E", "F", "G", "H" and "I".

4 - That, as can be seen from the said Sketch Plan, Annex "B", and/or Relocation Survey, Annex "C", plaintiffs' property is shaped in such a manner that the larger or BIGGER portion thereof is located and is bounded by a Creek (sic) (Sapang Maysilo) on the EAST and, it is on this BIGGER portion of their land that their residential houses, feed mills factory, vehicles, equipments (sic), and many other valuable things and articles are found, piled (sic) stacked, stored and housed and plaintiffs (sic) only way or lane for, or only means of, egress and ingress into, the said BIGGER portion of their property is the SMALLER portion thereof leading to the public road towards the WEST (Please see Annexes "B" and "C" hereof) which some of the defendants, namely: LAURENCE DEMORTE, CRIS DOULITTLE, LENNIE MENDOZA, JOSE ANDRES, LUCILA villegas and mely capatan ma. by tolerance of the plaintiffs, also use as their way, ingress and egress towards the same public road.

5 - That, due to the various acts of trespasses, thieveries and intrusions of many suspicious characters and dangerous elements, into the above-described LARGER portion of plaintiffs' (sic) which, not only threaten the plaintiffs' peace of mind, sense of security, and rights to privacy, adversely affecting their exclusive rights to peaceful enjoyment of their property described above, but also resulting to many losses of their equipments (sic) and various valuable things and articles therein, the said plaintiffs had to enclose and put up a steel fence at the gate or entrance abutting the public road on the WESTERN SMALLER portion of their property, but for no justifiable cause or reason, the said defendants, conspiring and confederating with one another, intimidated and threatened the plaintiffs with serious bodily harm and destruction on their property if they persist in putting or constructing any fence, or barricade in the said portion of their property above-described, constraining herein plaintiffs to institute the instant action and, in the process, are compelled to engage the services of counsel at an agreed attorney/s (sic) fees in the amount of P100,000.00 in addition to the sum of P3,000.00 as allowance per day of his appearance in Court in connection with this case apart from incurring actual and litigation expenses in the amount of no less than P50,000, to all of which the defendants must be ordered to recompense and pay to the plaintiffs.

6 - That, unless the defendants are immediately restrained, prohibited and stopped from preventing the herein plaintiffs in fencing and enclosing their own property, the latter will suffer damages, incapable of pecuniary estimation which can not (sic) be compensated by any monetary standard, arising not only from being unduly deprived and/or from being unable to exercise their basic and constitutional and human rights to property, peaceful enjoyment thereof, but also from the losses on account of thieveries, threats to their own safety and peace of mind and undue intrusion of criminal elements into their own property"[4]

In lieu of an Answer, defendants-appellees filed a Motion to Dismiss[5] on 28 February 2005 based on the following grounds: a) lack of jurisdiction; b) failure to pay the proper docket fees; and c) failure to state a cause of action under Section 1(g) of the Rules of Court.[6]

Defendants-appellees contended that the complaint filed is really one for ejectment and within the exclusive jurisdiction of the Metropolitan Trial Court. They also claimed that the amount of docket fees assessed and paid were incorrect because plaintiffs-appellants did not disclose the true nature of the case, the same having been

denominated as one for specific performance prohibition and damages.

On 11 March 2005, plaintiffs-appellants filed an Opposition to Motion to Dismiss insisting that the complaint filed was really one for specific performance and not an ejectment complaint. They argued that the "acts of coercion" and "attacks against the plaintiffs' rights to the enjoyment of their own property", as alleged in their complaint, are legal causes of action that should be redressed.[7]

A Reply[8] was subsequently filed by defendants-appellees to the Opposition to the Motion to Dismiss, insisting that the present case, at the very least, involves a dispute on possession of real property.[9]

On 27 April 2005, the court a quo promulgated the assailed final order granting the Motion to Dismiss prompting plaintiffs-appellants to interpose the instant appeal.

On 5 August 2005, plaintiffs-appellants filed their Appellants' Brief. However, it does not contain a separate, distinct and concise statement of the errors assigned which should be without repetition and numbered consecutively as required by the Rules of Court.[10] Neither does it have a subject index, clear and concise statement of the facts and of the case and of the issues of fact or law to be submitted to the court for its judgment, as mandated by Section 13 a, c, d, and e of Rule 44 of the Rules of Court.

It is necessary that the appellant point out specifically the alleged errors in the judgment appealed from and not merely confine himself to a discussion of facts in general. Otherwise, the absence of specific assignment of errors in appellant's brief is a ground for dismissal of the appeal.[11]

Nevertheless, while the direction of this Court to dismiss the appeal for non-compliance with Sec. 13 of Rule 44 is beyond question, sound policy dictates that it is far better to resolve cases on the merits, rather than on a technicality as the latter approach may result in injustice.[12]

On the premise that the court a quo dismissed the complaint for failure to state a cause of action, plaintiffs-appellants, in their brief, argue that the facts contained in appellants' complaint constitute a legal cause of action entitling appellants to the reliefs sought therein. They likewise fault the lower court for "manifestly misapplying rules for determining existence of cause of action."

As defined by the Rules of Court, "[a] cause of action is the act or omission by which a party violates rights of another.[13] Its essential elements are: 1) the existence

of a legal right in the plaintiff; 2) correlative duty in the defendant; and 3) an act or omission of the defendant in violation of plaintiff's right with consequential injury or damage to the plaintiff for which he may maintain an action for the recovery of damages or another appropriate relief.[14]

A motion to dismiss based on lack of cause of action hypothetical admits the truth of alleged facts in the complaint.[15]

Guided by the above rulings, a perusal of the allegations in the complaint clearly establishes a cause of action. Paragraph 3 of the complaint provides:

"* * *, however, the defendants * * * have constructed fences and enclosed their respective residential lots, more than One (1) Year Ago, intruding, encroaching and occupying portions of the plaintiffs' above-described property, to the extent as follows:"[16] (Underscoring and emphasis supplied.)

The lower court should have just confined itself to the allegations in the complaint to determine the existence of a cause of action and not the title of the complaint and plaintiffs-appellants' persistent assertion that the complaint was for specific performance.[17] The rule is that only the allegations in the complaint may properly be

considered in ascertaining the existence of a cause of cause.[18]

Parenthetically, plaintiffs-appellants themselves admitted their mistake in construing the complaint as one for specific performance and prayed for the liberal construction of the rules and that technicalities be set aside.[19]

Be that as it may, it is clear from the allegations in the complaint that it is one for accion publiciana and no longer for ejectment, as suggested by the defendants-appellees, considering the averment in the complaint that the intrusion to plaintiffs-appellant's property started more than a year ago.

The Supreme Court has ruled:

"Ejectment proceedings must observe jurisdictional requirements to complement their summary nature. Among them is the one-year period bar within which to bring the suit. After the lapse of this period, plaintiffs can no longer avail themselves of the summary suits in the Metropolitan Trial Court (MeTC) or the Municipal Trial Court (MTC), but must litigate in the Regional Trial Court in an ordinary action to recover possession.[20]

The Supreme Court has consistently held that those who occupy land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand. A summary action for ejectment is the proper remedy to enforce this implied obligation,[21] but not when one year has lapsed from the forcible intrusion.

Wherefore, the assailed Order of the Regional Trial Court of Malabon City, Branch 170, dated 27 April 2005, is hereby REVERSED. The case is hereby remanded to the court of origin for continuation of the proceedings therein.

SO ORDERED.

De Guia-Salvador and De Leon, JJ., concur.

[1] Records, pp. 89-91.

[2] Order, p. 3; Records, p. 91.

[3] Copied verbatim except technical description of land

[4] Complaint, pp. 2-4; Records, pp. 3-5

[5] Records, pp. 48-53.

[6] Id., on p. 1; Records, p. 48.

[7] Opposition to Motion to Dismiss, p. 2; Records, p. 69.

[8] Records, pp. 75-77.

[9] Id., on p. 1; Records, p. 75.

[10] Section 13, Rule 44.

[11] Civil Procedure, Annotated, by Feria and Noche, Volume 2, 2001 Edition, citing Sec. 1 (f). Rule 50, Rules of Court and Paterno vs. City of Manila, 17 Phil. 26 (1910).

[12] Asia Traders Insurance Corporation vs. Court of Appeals, 423 SCRA 114.

[13] Sec. 2, Rule 2.

- [14] Mathay vs. Consolidated Bank and Trust Co 58 SCRA 559.
- [15] Regino vs. Pangasinan Colleges of Science and Technology, 443 SCRA 56.
- [16] Complaint, pp. 2-3; Records, p. 3-4.
- [17] Opposition to Motion to Dismiss, p. 3; Records, p. 70.
- [18] Equitable Philippine Commercial International Bank vs. Court of Appeals, 425 SCRA 544.
- [19] Appellants' Brief, p. 11; Rollo, p. 17
- [20] Lopez vs. David, Jr., 426 SCRA 535, 536.
- [21] Macasaet vs. Macasaet, 439 SCRA 625.

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