JUAN L. PEREZ, LUIS KEH, CHARLIE LEE AND ROSENDO G. TANSINSIN, JR., PETITIONERS, VS. COURT OF APPEALS, LUIS CRISOSTOMO AND VICENTE ASUNCION, RESPONDENTS.

G.R. No. 107737. October 01, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals affirming the decision of the Regional Trial Court of Bulacan, Branch 9[2] that disposed of Civil Case No. 5610-M (Luis Crisostomo v. Luis Keh, Juan Perez, Charlie Kee and Atty. Rosendo G. Tansinsin, Jr.) as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered:
>
> a) directing defendant JUAN PEREZ to allow plaintiff LUIS CRISOSTOMO to occupy and operate the `Papaya Fishpond' for a period of 5 ½ years at the rental rates of P150,000.00 for the first six months and P175,000.00 for the remaining five years (the same rates provided for in Exh. 4);
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> b) ordering defendants LUIS KEH, CHARLIE LEE, JUAN PEREZ and ATTY. ROSENDO TANSINSIN, JR. to pay unto the plaintiff the amounts of P150,000.00 as actual damages; P20,000.00 as moral damages; P20,000.00 as exemplary damages; and P10,000.00 as attorney's fees, plus the costs of the suit;
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> c) directing the release, delivery or payment directly to plaintiff LUIS CRISOSTOMO of the amounts of P128,572.00 and P123,993.85, including the interests which may have already accrued thereon, deposited with the Paluwagan ng Bayan Savings Bank (Paombong, Bulacan Branch) in the name of the Clerk of Court and/or Deputy Clerk of Court Rodrigo C. Libunao under this Court's Order dated February 14, 1980; however, the plaintiff is required to pay defendant Perez the corresponding rental on the fishpond for the period June 1979-January 1980 based on the rate of P150,000.00 per annum, deducting therefrom the amount of P21,428.00 already paid to and received by then co-usufructuary Maria Perez (Exh. E);
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> d) dismissing the defendants' separate counter-claims for damages, for lack of merit; and
>
> e) dismissing the Pleading in Intervention Pro Interesse Suo filed by VICENTE ASUNCION on the ground of lis pendens.
>
> **SO ORDERED."**

The facts upon which the Court of Appeals based its Decision are the following:

> Along with Maria Perez, Fructuosa Perez, Victoria Perez, Apolonio Lorenzo and Vicente Asuncion, petitioner Juan Perez is a usufructuary of a parcel of land popularly called the "Papaya Fishpond." Covered by Transfer Certificate of Title No. 8498 of the Registry of Deeds for the Province of Bulacan, the fishpond is located in Sto. Rosario, Hagonoy, Bulacan and has an area of around 110 hectares. On June 5, 1975, the usufructuaries entered into a contract leasing the fishpond to Luis Keh for a period of five (5) years and renewable for another five (5) years by agreement of the parties, under the condition that for the first five-year period the annual

> rental would be P150,000.00 and for the next five years, P175,000.00. Paragraph 5 of the lease contract states that the lessee "cannot sublease" the fishpond "nor assign his rights to anyone."[3]

Private respondent Luis Crisostomo, who reached only the 5th grade, is a businessman engaged in the operation of fishponds. On September 20, 1977, while he was at his fishpond in Almazar, Hermosa, Bataan, his bosom friend named Ming Cosim arrived with petitioner Charlie Lee. The two persuaded private respondent to take over the operation of "Papaya Fishpond" as petitioner Lee and his partner, petitioner Luis Keh, were allegedly losing money in its operation. Private respondent having acceded to the proposal, sometime in December of that year, he and petitioners Lee and Keh executed a written agreement denominated as "pakiao buwis" whereby private respondent would take possession of the "Papaya Fishpond" from January 6, 1978 to June 6, 1978 in consideration of the amount of P128,000.00 broken down as follows: P75,000.00 as rental, P50,000.00 for the value of milkfish in the fishpond and P3,000 for labor expenses. Private respondent paid the P75,000.00 to petitioner Keh at the house of petitioner Lee in Sta. Cruz, Hagonoy, Bulacan in the presence of Lee's wife, brother-in-law and other persons. He paid the balance to petitioner Lee sometime in February or March 1978 because he was uncertain as to the right of petitioners Keh and Lee to transfer possession over the fishpond to him. Private respondent made that payment only after he had received a copy of a written agreement dated January 9, 1978[4] whereby petitioner Keh ceded, conveyed and transferred all his "rights and interests" over the fishpond to petitioner Lee, "up to June 1985." From private respondent's point of view, that document assured him of continuous possession of the property for as long as he paid the agreed rentals of P150,000.00 until 1980 and P175,000.00 until 1985.

For the operation of the fishpond from June 1978 to May 1979, private respondent, accompanied by Ming Cosim and Ambrocio Cruz, paid the amount of P150,000.00 at the Malabon, Metro Manila office of petitioner Keh. The following receipt was issued to him:

> "R E C E I P T
>
> June 6, 1978
>
> P150,000.00
>
> Received from Mr. LUIS KEH the sum of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00), Philippine Currency, as full payment of the yearly leased rental of the Papaya Fishpond for the year beginning June 1978 and ending on May 1979. The next payment shall be made on June 6, 1979.
>
> Said sum was paid in Producers Bank of the Philippines Check No. (illegible) 164595 dated June 6, 1978.
>
> Mr. Luis Keh has not transferred his rights over the fishpond to any person.
>
> Caloocan City, June 6, 1978.
>
> JUAN L. PEREZ ET AL.
>
> By:
>
> (Sgd.)
> Rosendo G. Tansinsin, Jr.
>
> CONFORME TO THE ABOVE:
>
> (Sgd.)
> LUIS KEH

Handwritten below that receipt but above the signature of petitioner Charlie Lee, are the following: "Rec'd from

Luis Crisostomo sum of one hundred fifty-four thousand P154,000.00 for above payment."[5]

Private respondent incurred expenses for repairs in and improvement of the fishpond in the total amount of P486,562.65.[6] However, sometime in June 1979, petitioners Tansinsin and Juan Perez, in the company of men bearing armalites, went to the fishpond and presented private respondent with a letter dated June 7, 1979 showing that petitioner Luis Keh had surrendered possession of the fishpond to the usufructuaries.

Because of the threat to deprive him of earnings of around P700,000.00 that the 700,000 milkfish in the fishpond would yield, and the refusal of petitioners Keh, Juan Perez and Lee to accept the rental for June 5, 1979 to June 6, 1980, private respondent filed on June 14, 1979 with the then Court of First Instance of Bulacan an action for injunction and damages. He prayed for the issuance of a restraining order enjoining therein defendants Keh, Perez and Lee from entering the premises and taking possession of the fishpond. He also prayed for actual damages of P50,000.00, moral damages of P20,000.00, exemplary damages in an amount that the court might award, and attorney's fees of P10,000.00.[7]

That same day, June 14, 1979, the lower court granted the prayer for a restraining order. On November 13, 1979, Crisostomo paid one of the usufructuaries, Maria Perez (who died in 1984), the amount of P21,428.00 as her 1/7 share of the annual rental of the fishpond for 1979-80. Maria Perez issued a notarized receipt for that amount.[8]

On January 11, 1980, the court lifted the restraining order thereby effectively depriving private respondent of possession over the fishpond. On February 14, 1980, the parties submitted a partial compromise agreement with the following stipulations:

> 1. The amount of P128,572.00 that private respondent deposited as rental with the Office of the Clerk of Court under O.R. No. 21630 dated November 15, 1979 be withdrawn from that office and deposited with the Paluwagan ng Bayan Savings & Loan Association, Inc. (Paombong, Bulacan branch) and which deposit shall not be withdrawn unless authorized by the court; and
>
> 2. The plaintiff could personally harvest milkfish "with commercial value" in the presence of Perez and under the supervision of the deputy clerk of court within the appointed period and that the net proceeds of the sale (P123,993.85 per the Report dated March 4, 1980 of the deputy clerk of court) be deposited in the name of the deputy clerk of court of Branch 6 of the then Court of First Instance of Bulacan with the same branch of the Paluwagan ng Bayan Savings & Loan Association, Inc. and which deposit shall not be withdrawn unless upon order of the court after hearing.

The court approved that agreement on that same date.

Thereafter, the usufructuaries entered into a contract of lease with Vicente Raymundo and Felipe Martinez for the six-year period of June 1, 1981 to May 30, 1987 in consideration of the annual rentals of P550,000.00 for the first two years and P400,000.00 for the next four years. Upon expiration of that lease, the same property was leased to Pat Laderas for P1 million a year.

The complaint was later amended to include petitioner Tansinsin, the alleged administrator of the fishpond, as one of the defendants.[9] Except in the joint answer that the defendants had filed, petitioners Keh and Lee did not appear before the court. Neither did they testify.

In their defense, petitioners Juan Perez and Tansinsin presented evidence to prove that they had negotiated for the lease of the property with Benito Keh in 1975. However, they averred, for reasons unknown to petitioner Perez, in the contract of lease that petitioner Tansinsin prepared, petitioner Luis Keh was named as lessee. Petitioner Perez had never met Keh or Lee but according to petitioner Tansinsin, petitioner Luis Keh was substituted for Benito Keh because the latter was preoccupied with his other businesses. Sometime in 1979, petitioner Keh's agent

named Catalino Alcantara relayed to petitioner Perez, Keh's intention to surrender possession of the fishpond to the usufructuaries. Because petitioner Perez demanded that said intention should be made in writing, on June 5, 1979, Perez received from Keh a letter to that effect.

When private respondent received a copy of that letter of petitioner Keh, he took the position that petitioner Perez had no right to demand possession of the fishpond from him because Perez had no contract with him. Private respondent was allowed four (4) months within which to vacate the premises but he immediately filed the complaint for injunction and damages. Thereafter, private respondent's counsel, Atty. Angel Cruz, and other persons tried to prevail upon petitioner Perez to allow private respondent to occupy the property for three (3) more years. Petitioner Perez declined that proposition.

On September 6, 1989, the lower court rendered the aforesaid decision. It arrived at the conclusion that the defendants therein "conspired with one another to exploit the plaintiff's naivete and educational inadequacies and, in the process, to defraud him by inducing him into taking possession of the `Papaya Fishpond' in their fond hope that, as soon as the plaintiff – applying his known expertise as a successful fishpond operator – shall have considerably improved the fishpond, they will regain possession of the premises and offer the lease thereof to other interested parties at much higher rental rates as laid bare by supervening realities." That conclusion was founded on the following:

> 1. The plaintiff's (private respondent Crisostomo's) testimony bears the "hallmarks of truth: candid, straightforward and uncontrived." He had proven himself a "much more credible witness than his opponents."
>
> 2. The notarized receipt of Maria Perez of her share as a usufructuary in the rental for 1979-80 is a "clear avowal of plaintiff's legitimate operation of the 'Papaya Fishpond' as assignee or transferee thereof." It was impossible for the other usufructuaries, especially Juan Perez who was residing in the same locality and actively involved in the "affairs of the fishpond," not to have known that plaintiff occupied the fishpond for one and a half years as assignee of Keh and Lee. It was unbelievable that both Tansinsin and Perez would only perceive the plaintiff as a mere encargado of Keh and Lee.
>
> 3. The receipt whereby Tansinsin acknowledged payment of P150,000.00 as rental for June 1978-May 1979 bears "tell-tale signs" of the conspiracy. Firstly, the statement "Mr. Luis Keh has not transferred his rights over the fishpond to any person" is entirely irrelevant to that receipt unless it was intended "to preempt plaintiff's claim of rights and interests over the said property as either sub-lessee or assignee." Secondly, Keh's having signified "Conforme to the above" is a gratuitous notation as it actually indicates that the money came from the plaintiff. Thirdly, Atty. Tansinsin's receipt of the amount for and in behalf of "JUAN L. PEREZ ET AL." illustrates his "active and dominant role in the affairs" of the fishpond whether as administrator thereof or as beneficiary of a share from its fruits.
>
> 4. Service upon plaintiff of Keh's letter surrendering possession of the fishpond implied that defendants knew that plaintiff was in possession thereof. That they resorted to the intimidating presence of armed men is proof that they expected the plaintiff to refuse to give up possession of the property. These circumstances "completely belie the protestations of Perez and Tansinsin of lack of knowledge of the contract entered into" between the plaintiff, and Lee and Keh.
>
> 5. The nonpresentation of Lee and Keh on the witness stand by Atty. Tansinsin "can very well be construed as a smart maneuver to cover up the sinister cabal for deception inferrable from the attendant facts and circumstances." In their joint answer, Keh and Lee tried to relieve Perez of any liability in favor of the plaintiff. That is understandable "because, should the Court disregard the reliance of Perez on the prohibition against sub-lease or assignment of the 'Papaya Fishpond', then all the defendants shall have exposed themselves to unavoidable liability for the acts complained of by the plaintiff."
>
> 6. Atty. Tansinsin was the common legal counsel of all the defendants and, by his testimony, even the plaintiff.

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> Atty. Tansinsin's denial that he was plaintiff's counsel was his way of "deflecting plaintiff's imputations of professional improprieties against him." Plaintiff must have assumed that Atty. Tansinsin was also his lawyer considering that they were "on very friendly terms" and therefore Atty. Tansinsin might have been instrumental in dispelling whatever fears plaintiff had entertained as regards the business transactions involved.
>
> 7. The fact that the fishpond was subsequently rented out for astronomical amounts is proof that the plaintiff had considerably improved the fishpond.[10]

The lower court added:

> "Bluntly yet succinctly put, the foregoing circumstances when viewed collectively with other cogent aspects of the instant case inexorably lead to the Court's well-considered view that the defendants – tempted by the bright prospect of a lucrative business coup – embarked themselves in an egregious scheme to take undue advantage of the gullibility of the plaintiff who, as borne by ensuing events, proved himself an ideal victim to prey upon: pathetically unsuspecting yet only too eager to invest his material resources and self-acquired technical know-how to redeem what was then a dwindling business enterprise from total collapse. Plaintiff's impressive performance, alas, only redounded ultimately to the supreme benefit exclusively of the defendants. A classic case of "ako ang nagsaing, iba ang kumain!"

The defendants elevated the case to the Court of Appeals which, as earlier mentioned, affirmed the decision of the trial court and disposed of the appeal on February 18, 1992 as follows:

> "WHEREFORE, in view of all the foregoing, judgment appealed from, is hereby AFFIRMED.
>
> However, intervenor-appellant is hereby declared co-usufructuary of the Papaya fishpond, and is, therefore, entitled to all rights and interest due to the usufructuaries of the said fishpond.
>
> SO ORDERED."

On the defendant-appellants' contention that the principle of res judicata should be applied because the Court of Appeals had ruled on the issue of possession in CA-G.R. No. 10415-R, a petition for certiorari and injunction with preliminary mandatory injunction, the Court of Appeals held that said principle was unavailing. The petition in CA-G.R. No. 10415-R involved a writ of injunction "which presupposes the pendency of a principal or main action." Moreover, the decision in that case did not resolve the issue of who should be in possession of the Papaya Fishpond as findings of fact of the trial court cannot be reviewed in a certiorari proceeding.

The Court of Appeals ruled further that appellee Crisostomo "cannot be considered a possessor in bad faith, considering that he took possession of the fishpond when appellants Keh and Lee assigned to him appellant Keh's leasehold right." It held that appellant Perez knew of the transfer of possession of the fishpond to appellee and that the receipt evidencing payment of the 1978-1979 rental even bears an expressed admission by Lee that the payment came from appellee Crisostomo.

Agreeing with the court a quo that "defendants-appellants employed fraud to the damage and prejudice of plaintiff-appellee," the Court of Appeals held that appellants should be held liable for damages. As regards the intervention pro interesse suo, the appellate court ruled that the same should be allowed because, even if the litigation would not be technically binding upon him, complications might arise that would prejudice his rights. Pointing out that a usufruct may be transferred, assigned or disposed of, the Court of Appeals ruled that the intervenor cannot be excluded as a usufructuary because he had acquired his right as such from a sale in execution of the share of Jorge Lorenzo, one of the usufructuaries of the fishpond.

Herein petitioners filed a motion for the reconsideration of that Decision of the Court of Appeals. They alleged that the Decision was premature because it was rendered when they had not yet even received a copy of the

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intervenor's brief wherein assignments of errors that directly affected their rights and interests were made. They insisted that the principle of res judicata was applicable because in G.R. No. 64354, this Court upheld the Decision of the Court of Appeals in CA – G.R. No. 10415. They added that appellee Crisostomo was guilty of forum shopping because the issue of possession had been "squarely decided" in CA-G.R. No. 10415. They stressed that the contract of lease between Keh and the usufructuaries prohibited subleasing of the fishpond; that by the receipt dated June 6, 1978, it was Keh who paid the rental; that appellee Crisostomo was a perjured witness because in the notebook showing his expenses, the amount of P150,000.00 for rentals does not appear; that the term of the contract had expired and there was no renewal thereof, and that the consideration of P150,000.00 was grossly inadequate. They averred that the Court of Appeals erred in awarding damages that were not prayed for in the second amended complaint and that amounts not specified in the complaint were awarded as damages. They disclaimed that Atty. Tansinsin was the administrator of the fishpond.

On October 30, 1992, the Court of Appeals denied the motion for reconsideration for lack of merit. It ruled that the Decision was not prematurely promulgated "considering that the intervention proceeding is solely between intervenor and defendants-appellants, which is completely separable and has nothing to do with the merits of the appeal."

In the instant petition for review on certiorari, petitioners raise six (6) grounds for giving due course to it.[11] Those grounds may be distilled into the following: (a) the applicability of the principle of res judicata; (b) the premature promulgation of the Decision of the Court of Appeals, and (c) private respondent was not a sublesee of the fishpond under the law.

In arguing that the principle of res judicata applies in this case, petitioners rely on the portion of the Decision[12] of the Court of Appeals in CA-G.R. No. 10415 that states:

> "We find no basis for declaring respondent Judge guilty of grave abuse of discretion on this regard. The trial court's finding that petitioner does not appear entitled to any contract or law to retain possession of the fishpond in question since he is neither an assignee or sub-lessee and, therefore, merely a stranger to the contract of lease is a finding of fact review of which is not proper in a certiorari proceedings. Not only is petitioner not a party to the lease agreement over the fishpond in question but also the very authority upon which he predicates his possession over the fishpond – that the leasehold right of Luis Keh had been assigned to him – undoubtedly lacks basis for the very contract between Luis Keh and the lessors expressly provides –
>
> 'That the lessee cannot sub-lease above-described fishpond nor assign his rights to anyone.'

x x x x x x x x x."

(Underscoring supplied by petitioners.)[13]

Petitioners assert that said Decision of the Court of Appeals which was in effect upheld by this Court when it denied the petition for review on certiorari in G. R. No. 64354 (Luis Crisostomo v. Intermediate Appellate Court),[14] is "res judicata to the issue of possession in this case."[15] However, as expressed in that quoted portion of the Decision in CA-G.R. No. 10415, the issue of whether private respondent is an assignee or a sub-lessee "is a finding of fact review of which is not proper in a certiorari proceeding" or the proceeding in that case.

CA-G.R. No. 10415 was spawned by the lifting on January 11, 1980 of the restraining order previously issued by the trial court on June 14, 1979. Private respondent filed a special civil action of certiorari and injunction with preliminary mandatory injunction and/or mandatory restraining order to question the order of January 11, 1980. Thus, the issue in that petition was whether or not the trial court gravely abused its discretion in lifting the restraining order. The statement in that Decision of the Court of Appeals that a writ of preliminary injunction may

be denied "if the party applying for it has insufficient title or interest to sustain it and no claim to an ultimate relief (is) sought" by no means resolved the issue of who is entitled to possess the fishpond. In denying the petition for certiorari, the Court of Appeals was simply saying that there was no reason to restore private respondent to the possession of the fishpond pursuant to the restraining order that he had earlier obtained. The issue of possession was collaterally discussed only to resolve the propriety of the lifting of the restraining order based on evidence available at that time. Hence, there was no judgment on the merits in the main case or in Civil Case No. 5610-M. Simply put, the Decision in CA-G.R. No. 10415 involves an interlocutory order on the propriety of the lifting of the restraining order and not a judgment on the merits of Civil Case No. 5610-M.

For res judicata to apply, the following requisites must concur: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) the judgment must be on the merits, and (d) there must be between the first and second actions identity of parties, subject matter and causes of action.[16] The Decision in CA-G.R. No. 10415 having resolved only an interlocutory matter, the principle of res judicata cannot be applied in this case. There can be no res judicata where the previous order in question was not an order or judgment determinative of an issue of fact pending before the court but was only an interlocutory order because it required the parties to perform certain acts for final adjudication.[17] In this case, the lifting of the restraining order paved the way for the possession of the fishpond on the part of petitioners and/or their representatives pending the resolution of the main action for injunction. In other words, the main issue of whether or not private respondent may be considered a sublessee or a transferee of the lease entitled to possess the fishpond under the circumstances of the case had yet to be resolved when the restraining order was lifted.

Petitioners assail the Court of Appeals' Decision as "premature" and therefore null and void, because prior to the promulgation of that Decision, private respondent-intervenor Vicente Asuncion failed to furnish them with a copy of his brief the assignment of errors of which allegedly "directly" affected their rights and interests.[18] While it is true that petitioners were deprived of the opportunity to contravene the allegations of the intervenor in his brief, that fact can not result in the nullity of the Decision of the Court of Appeals.[19] Vicente Asuncion intervened pro interesse suo or "according to his interest."[20] Intervention pro interesse suo is a mode of intervention in equity wherein a stranger desires to intervene for the purpose of asserting a property right in the res, or thing, which is the subject matter of the litigation, without becoming a formal plaintiff or defendant, and without acquiring control over the course of a litigation, which is conceded to the main actors therein.[21] In this case, intervenor Vicente Asuncion aimed to protect his right as a usufructuary. Inasmuch as he has the same rights and interests as petitioner Juan Perez, any judgment rendered in the latter's favor entitled him to assert his right as such usufructuary against his co-usufructuary. Should said intervenor claim his share in the usufruct, no rights of the petitioners other than those of Juan Perez would be prejudiced thereby.

Worth noting is the fact that after the trial court had allowed Vicente Asuncion's intervention pro interesse suo, petitioner Juan Perez filed a petition for certiorari docketed as CA-G.R. No. 13519 to set aside the order denying his motion to dismiss the pleading in intervention. In its Decision of January 27, 1988, the Seventh Division of the Court of Appeals[22] denied the petition for certiorari for lack of merit. It upheld the trial court's ruling to allow the intervention pro interesse suo to protect Vicente Asuncion's right as a co-usufructuary in the distribution or disposition of the amounts representing the rentals that were deposited with the court. That Vicente Asuncion had filed Civil Case No. 8215-M seeking recovery of his alleged share in the fruits of the Papaya Fishpond from 1978 would not be a reason for the dismissal of the motion for intervention pursuant to Rule 16, Sec. 1 (e) of the Rules of Court.[23] The Court of Appeals explained as follows:

> "Indeed, if by means of intervention a stranger to a lawsuit is permitted to intervene without thereby becoming a formal plaintiff or defendant (Joaquin v. Herrera, 37 Phil. 705, 723 [1918]), then there is in the case at bar no identity of parties to speak of. Lis pendens as a ground for a motion to dismiss requires as a first element

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identity of parties in the two cases.

Nor is there an identity of relief sought. Civil Case No. 8295-M seeks an accounting of the proceeds of the fishpond while Civil Case No. 5610-M is for injunction to prevent the petitioner from retaking the fishpond from Luis Crisostomo. The herein private respondent sought to intervene in the latter case simply to protect his right as usufructuary in the money deposited in the court by the plaintiff Luis Crisostomo. We hold that in allowing the intervention in this case the trial court acted with prudence and exercised its discretion wisely."[24]

Unconvinced by the Court of Appeals' Decision in CA-G.R. SP No. 13519, petitioner Juan Perez filed a petition for review on certiorari with this Court under G.R. No. 82096. On May 9, 1988, this Court denied the petition on the grounds that the issues raised are factual and that there is no sufficient showing that the findings of the respondent court are not supported by substantial evidence or that the court had committed any reversible error in the questioned judgment.[25] The Resolution of the Court dated May 9, 1988 became final and executory on August 26, 1988.[26]

Moreover, granting that the intervention be considered as Vicente Asuncion's "appeal," a litigant's failure to furnish his opponent with a copy of his appeal does not suffice to warrant dismissal of that appeal. In such an instance, all that is needed is for the court to order the litigant to furnish his opponent with a copy of his appeal.[27] This is precisely what happened in this case. On May 13, 1992, the Court of Appeals issued a Resolution directing counsel for intervenor to furnish herein petitioners with a copy of intervenor Vicente Asuncion's brief within a 10-day period. It also granted petitioners an opportunity to file a reply-brief or memorandum and the intervenor, a reply to said memorandum.[28] That Resolution is proper under the premises because, by the nature of an intervention pro interesse suo, it can proceed independently of the main action. Thus, in the Resolution of October 30, 1992, in resolving the issue of the alleged prematurity of its Decision, the Court of Appeals held that "the proceeding is solely between intervenor and defendants-appellants, which is completely separable and has nothing to do with the merits of the appeal."[29]

At the hearing of Civil Case No. 5610-M, petitioner Juan Perez attempted to establish the death on October 14, 1979 of Jorge Lorenzo,[30] the usufructuary from whom Vicente Asuncion derived his right to intervene pro interesse suo. Since under Article 603 of the Civil Code a usufruct is extinguished "by the death of the usufructuary, unless a contrary intention clearly appears," there is no basis by which to arrive at the conclusion that the usufruct originally exercised by Jorge Lorenzo has indeed been extinguished or, on the contrary, has survived Lorenzo's demise on account of provisions in the document constituting the usufruct. That matter is best addressed in Civil Case No. 8215-M wherein Vicente Asuncion seeks his share as a transferee of the usufruct established for Jorge Lorenzo. All that is discussed here is the matter of intervention pro interesse suo vis-à-vis the issue of prematurity of the Decision of the Court of Appeals.

Petitioners' principal argument against the Court of Appeals' Decision in favor of private respondent Crisostomo is that he could not have been an assignee or sub-lessee of the fishpond because no contract authorized him to be so. Petitioners' argument is anchored on factual issues that, however, have no room for discussion before this Court. It is well-entrenched doctrine that questions of fact are not proper subjects of appeal by certiorari under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law.[31] Factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when said court affirms the factual findings of the trial court.[32] Accordingly, this review shall be limited to questions of law arising from the facts as found by both the Court of Appeals and the trial court.

Admittedly, the contract between the usufructuaries and petitioner Keh has a provision barring the sublease of the fishpond. However, it was petitioner Keh himself who violated that provision in offering the operation of the

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fishpond to private respondent. Apparently on account of private respondent's apprehensions as regards the right of petitioners Keh and Lee to transfer operation of the fishpond to him, on January 9, 1978, petitioner Keh executed a document ceding and transferring his rights and interests over the fishpond to petitioner Lee. That the same document might have been a ruse to inveigle private respondent to agree to their proposal that he operate the fishpond is of no moment. The fact is, petitioner Keh did transfer his rights as a lessee to petitioner Lee in writing and that, by virtue of that document, private respondent acceded to take over petitioner Keh's rights as a lessee of the fishpond.

Although no written contract to transfer operation of the fishpond to private respondent was offered in evidence,[33] the established facts further show that petitioner Juan Perez and his counsel, petitioner Tansinsin, knew of and acquiesced to that arrangement by their act of receiving from the private respondent the rental for 1978-79. By their act of receiving rental from private respondent through the peculiarly written receipt dated June 6, 1978, petitioners Perez and Tansinsin were put in estoppel to question private respondent's right to possess the fishpond as a lessee. Estoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[34]

Nevertheless, we hesitate to grant private respondent's prayer that he should be restored to the possession of the fishpond as a consequence of his unjustified ejectment therefrom. To restore possession of the fishpond to him would entail violation of contractual obligations that the usufructuaries have entered into over quite a long period of time now. Supervening events, such as the devaluation of the peso as against the dollar as well as the addition of improvements in the fishpond that the succeeding lessees could have introduced, have contributed to the increase in rental value of the property. To place private respondent in the same position he was in before the lifting of the restraining order in 1980 when he was deprived the right to operate the fishpond under the contract that already expired in 1985 shall be to sanction injustice and inequity. This Court, after all, may not supplant the right of the usufructuaries to enter into contracts over the fishpond through this Decision. Nonetheless, under the circumstances of the case, it is but proper that private respondent should be properly compensated for the improvements he introduced in the fishpond.

Article 1168 of the Civil Code provides that when an obligation "consists in not doing and the obligor does what has been forbidden him, it shall also be undone at his expense." The lease contract prohibited petitioner Luis Keh, as lessee, from subleasing the fishpond. In entering into the agreement for pakiao-buwis with private respondent, not to mention the apparent artifice that was his written agreement with petitioner Lee on January 9, 1978, petitioner Keh did exactly what was prohibited of him under the contract – to sublease the fishpond to a third party. That the agreement for pakiao-buwis was actually a sublease is borne out by the fact that private respondent paid petitioners Luis Keh and Juan Perez, through petitioner Tansinsin the amount of annual rental agreed upon in the lease contract between the usufructuaries and petitioner Keh. Petitioner Keh led private respondent to unwittingly incur expenses to improve the operation of the fishpond. By operation of law, therefore, petitioner Keh shall be liable to private respondent for the value of the improvements he had made in the fishpond or for P486,562.65 with interest of six percent (6%) per annum from the rendition of the decision of the trial court on September 6, 1989.[35]

The law supports the awards of moral and exemplary damages in favor of private respondent and against the petitioners. Their conspiratorial scheme to utilize private respondent's expertise in the operation of fishponds to bail themselves out of financial losses has been satisfactorily established to warrant a ruling that they violated Article 21 of the Civil Code and therefore private respondent should be entitled to an award of moral damages.

Article 21 states that "(a)ny person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." Exemplary damages shall likewise be awarded pursuant to Article 2229 of the Civil Code.[36] Because private respondent was compelled to litigate to protect his interest, attorney's fees shall also be awarded.[37]

WHEREFORE, in light of the foregoing premises, the decision of the Court of Appeals is AFFIRMED insofar as it (a) directs the release to private respondent of the amounts of P128,572.00 and P123,993.85 deposited with the Paluwagan ng Bayan Savings Bank in Paombong, Bulacan and (b) requires private respondent Crisostomo to pay petitioner Juan Perez the rental for the period June 1979 to January 1980 at the rate of P150,000.00 per annum less the amount of P21,428.00 already paid to usufructuary Maria Perez. It should, however, be subject to the MODIFICATIONS that:

1. Petitioner Luis Keh shall pay private respondent Luis Crisostomo in the amount of P486,562.25 with legal interest from the rendition of the judgment in Civil Case No. 5610-M or on September 6, 1989, and

2. Petitioners be made liable jointly and severally liable for moral damages of P50,000.00, exemplary damages of P20,000 and attorney's fees of P10,000.00.

No costs.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Penned by Associate Justice Consuelo Ynares-Santiago and concurred in by Associate Justices Ricardo L. Pronove, Jr. and Nicolas P. Lapeña, Jr.

[2] Presided by Judge D. Roy A. Masadao, Jr.

[3] Exh. 2-Motion.

[4] Exh. B.

[5] Exh. 3- Motion; Record of Civil Case No. 5610-M, Vol. I, p. 9.

[6] Exh. C.

[7] Complaint in Civil Case No. 5610-M.

[8] Exh. E., p. 831, Vol. II, Records.

[9] Record of Civil Case No. 5610-M, p. 42.

[10] Rollo, pp. 130-132.

[11] Petition, pp. 14-17.

[12] Penned by Associate Justice Serafin R. Cuevas and concurred in by Associate Justices Vicente V. Mendoza and Luis A. Javellana.

[13] Petition, pp. 13-14; Record, pp. 224-225.

[14] Rollo in G. R. No. 64354, p. 113.

[15] Petition, p. 14.

[16] A.G. Development Corporation v. Court of Appeals, G.R. No. 111662, October 23, 1997, 281 SCRA 155, 158-159.

[17] Philippine Coal Miner's Union v. Cebu Portland Cement Co., et al., 119 Phil. 1063 (1964).

[18] Petition, p. 15.

[19] Failure to file brief is not a ground for the nullity of a decision rendered without such brief. In one case, this Court held that the absence of briefs in an appeal cannot deter this Court from deciding it (Fireman's Fund Insurance Co. v. Maersk Line Far East Service, 137 Phil. 344, 346[1969]).

[20] 2 BOUVIER'S LAW DICTIONARY 2727 (3rd Revision).

[21] MORENO, PHILIPPINE LAW DICTIONARY 3rd ed., p. 243 citing Joaquin v. Herrera, 37 Phil. 723 (1918).

[22] Composed of Associate Justices Vicente Mendoza, Gloria C. Paras and Conrado T. Limcaoco.

[23] This provides for the dismissal of an action where there is another action pending between the same parties for the same cause.

[24] Rollo in G.R. No. 82096, "Juan L. Perez v. Court of Appeals and Vicente Asuncion," pp. 17-18.

[25] Ibid., p. 32.

[26] Ibid., p. 46. RTC Decision in Civil Case No. 5610-M, p. 4; Rollo of G.R. No. 107737, p. 123.

[27] Precision Electronics Corporation v. NLRC, G.R. No. 86657, October 23, 1989, 178 SCRA 667, 670.

[28] Rollo, p. 254.

[29] Ibid., p. 54.

[30] TSN, September 9, 1987, pp. 4-11.

[31] Valmonte v. Court of Appeals, L-41621, February 18, 1999 citing Far East Bank & Trust Company v. Court of Appeals, 326 Phil. 15 (1996).

[32] Fortune Motors (Phils.) Corporation v. Court of Appeals, 335 Phil. 315, 330 (1997).

[33] The agreement on pakiao-buwis could no longer be located (CA Decision, p. 4).

[34] Roblett Industrial Construction Corporation v. Court of Appeals, 334 Phil. 62, 67 (1997).

[35] Philippine Airlines, Inc. v. Court of Appeals, 341 Phil. 624, 633-634 (1997).

[36] This article provides that: "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."

[37] Art. 2208 (2), Civil Code.

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