

**PRUDENCE REALTY AND DEVELOPMENT CORPORATION,
PETITIONER, VS. THE COURT OF APPEALS, HON. NORBERTO Y.
GERALDEZ, IN HIS CAPACITY AS PRESIDING JUDGE RTC, BRANCH
36, CALAMBA, LAGUNA,...**

G.R. No. 110274. March 21, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

On July 29, 1979, Paulina Gonzales Habana sold three parcels of land covering an area of 10.36 has. to Prudence Realty and Development Corporation for P2,279,398.00.

On September 2, 1980, the Corporation filed an action for the rescission of the contract. On September 21, 1982, the then Court of First Instance of Manila rendered judgment in accordance with a compromise agreement reached by the parties and approved by the court.[1] The agreement was embodied in the judgment.

On February 19, 1990, Habana instituted an action with the Regional Trial Court of Calamba for the declaration of nullity of the compromise agreement. She alleged that the agreement was void because it contained in its paragraph 8 (c) a potestative suspensive condition dependent on the will of the debtor Corporation.

On April 11, 1990, the defendant moved to dismiss for lack of jurisdiction, arguing that the complaint was actually an action for the annulment of a judgment of a regional trial court and therefore cognizable only by the Court of Appeals.

On June 7, 1990, Habana amended her complaint to allege three alternative causes of action, to wit, invalidity of the compromise agreement, as in the original complaint; failure of the defendant to pay the balance of the purchase price; and the need for the court to fix the period for the payment of the balance of the purchase price.[2]

The amended complaint was opposed by the defendant on the ground that the court should first resolve the first cause of action before it could proceed to consider the second and third alternative causes of action. Citing *Versosa v. Versosa*,[3] it contended that if the cause of action set forth in the original complaint was not within the jurisdiction of the court where it was filed, the jurisdictional defect could not be corrected by the amendment of the complaint so as to include therein causes of action within the jurisdiction of the court.

The Corporation also argued that since the trial court had no jurisdiction to hear and determine the first cause of action, it was not possible to decide the second or the third alternative causes of actions, which should therefore be dismissed for prematurity. Besides, joinder of causes of action is permitted only subject to the rules regarding jurisdiction, venue and joinder of parties, which have not been observed in this case.

It was further pointed out that since the compromise agreement did not provide for a period for compliance, the five-year period within which a judgment may be executed on motion had not yet even begun to run.

A subsequent motion to dismiss reiterated the same grounds and was denied in an order dated February 28,

1991,[4] reading in part as follows:

This Court does not agree with defendant's argument in its Motion to Dismiss that being mere alternatives to the first cause of action the second and third causes of action suffer from the same congenital infirmity and are necessarily dependent upon the resolution of the first alternative cause of action. The Rules of Court, Rule 8, Section 2, expressly provides:

Sec. 2. Alternative causes of action or defense - A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.

In fact, the decisions of the Supreme Court have even authorized the pleading of inconsistent alternative cause of action or defense provided that each is consistent in itself. (*Castle Bros. Wolf and Sons v. Go-Juno*, 7 Phil. 144, *Nelayan, et al.*, G.R. No. L-14518, Aug. 29, 1960, *La Mallorca v. Court of Appeals, et al.*, No. L-20671, July 27, 1966).

Similarly, this Court is not persuaded by defendant's contention that plaintiff's second and third alternative cause of action fail to state a sufficient cause of action and therefore should be dismissed. It is a well-settled rule that lack of a cause of action as a ground for dismissal must appear on the face of the complaint, and to determine the sufficiency of the cause of action, only the facts alleged in the complaint, and no other, should be considered (*Dimayuga v. Dimayuga*, 51 O.G. 2397, *Reivares v. Arrastia*, G.R. No. L-17083, July 31, 1962, *Cervets, Inc. v. National Development Co., et al.*, 54 O.G. 5322, *Uy Chao v. De la Roma Steamship Co.*, No. L-14495, Sept. 29, 1962). The validity of defendant's argument that the decision upon compromise has not yet become dormant so as to justify enforcement by an independent action may be determined only after evidence has been presented during the trial on the merits.

Finally, applying the rule on joinder of causes of action set forth in the Rules of Court, Rule 2, Section 5, which expressly provides that said rule shall be subject to rules regarding jurisdiction, this court finds that there can be no proper joinder of the first alternative cause of action with the second and third alternative causes of action.

The reaction of the defendant was to file a special civil action for certiorari and mandamus with the Court of Appeals. It claimed that the trial court committed grave abuse of discretion in proceeding with the case instead of dismissing the second and third alternative causes of action for lack of jurisdiction.

The Corporation fared no better in the appellate court. In dismissing its petition, the Court of Appeals declared:

Petitioner's contention that the alternative cause of action do not state a cause of action is predicated on the supposition that the judgment has not become dormant after the lapse of seven years from the date of its finality. The question of whether it has become dormant or not rests on whether or not a period or a condition was set by the parties. Such issue, as earlier discussed, boils down to a question of fact which is not proper in certiorari proceedings.

Petitioner finally contends that the third cause of action for fixing of a period is a mere incident in execution proceedings. It may well be that such fixing of a period may just be an incident in the execution proceedings but petitioner failed to explain why it cannot be a separate cause of action. There is nothing in Article 1197 of the New Civil Code which may be taken to limit the power to set such period to the court which approved the compromise agreement. The said article vests general power on courts to set such period when one is intended by the parties.[5]

The petitioner is now before this Court and raises the following issues;

First - WHETHER OR NOT THE ISSUE OF WHETHER THE PARTIES INTENDED A CONDITION OR A PERIOD WHICH IS NOT EVEN RAISED BEFORE THE RESPONDENT COURT REQUIRES PREFERENTIAL RESOLUTION AND IS DECISIVE OF THE ISSUE OF JURISDICTION;

Second - WHETHER OR NOT THE ISSUE OF JURISDICTION RAISED IS DETERMINABLE FROM THE ALLEGATIONS IN THE PLEADINGS BELOW AND HENCE REQUIRES NO FURTHER EVIDENTIARY BASIS FOR ITS RESOLUTION;

Third - WHETHER THE PROPER REMEDY UNDER THE FACTS ALLEGED IN THE SECOND ALTERNATIVE CAUSE OF ACTION IS AN INDEPENDENT ACTION OR A MOTION FOR EXECUTION; and

Fourth - WHETHER OR NOT THE SECOND AND THIRD ALTERNATIVE CAUSES OF ACTION ARE SUFFICIENT TO STATE A CAUSE OF ACTION FOR RESCISSION AND FOR FIXING A PERIOD.

We rule first on the admission of the amended complaint.

In the early case of *Alvarez v. Commonwealth*,^[6] the Court held:

When it is evident that the court has no jurisdiction over the person and the subject matter, that the pleading is so fatally defective as not to be susceptible of amendment, or that to permit such amendment would radically alter the theory and nature of the action, then the court may refuse the amendment of the defective pleading and order the dismissal of the case. (Emphasis supplied).

In that case, a demurrer to the complaint for failure to state a cause of action and a motion to dismiss the same for lack of jurisdiction were filed. Notwithstanding the subsequent motion for amendment, the complaint was dismissed. This Court, in rejecting the amendment, held that under Section 101 of the Code of Civil Procedure, the amendment of a pleading after a demurrer was sustained was not an absolute right of the pleader but rested rather on the sound discretion of the court.

In the later case of *Rosario v. Carandang*,^[7] the trial court likewise denied the amendment filed subsequent to a motion to dismiss for lack of jurisdiction. The Court observed:

The case might be different had the amendment been made before an answer or a motion to dismiss had been filed, since the original complaint was then amenable, and the amendment could supersede the original pleading, as of right, without leave of court being required, and without the court taking cognizance at all of the original complaint.

The ruling was based on Rule 17, Sec. 1, of the 1940 Rules of Court (now Rule 10, Sec. 2) reading as follows:

Sec. 1. Amendment; how made. - A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten (10) days after it is served (Emphasis supplied).

It has since been held, however, that a motion to dismiss is not a responsive pleading that will prevent the amendment of a complaint as a matter of right. Thus, in *Soledad v. Mamañgun*,^[8] Justice Bautista Angelo said for the Court:

It is contended that the court a quo erred in not dismissing the complaint on the ground of want of jurisdiction for the reason that the original complaint filed before the municipal court failed to aver that it was an action for unlawful detainer and the amount being recovered was beyond the jurisdiction of that court. In other words, plaintiff insinuates that the court a quo erred in not considering the original complaint filed by the plaintiff before the municipal court as one simply for recovery of a sum of money which was beyond its jurisdiction

even if later it was amended over the opposition of defendant.

In overruling this argument the court a quo acted on the theory that appellee had the right to amend his complaint as a matter of course considering that at the time he did it appellant has not yet interposed any responsive pleading. Thus, the court said: "The amended complaint admitted by the Municipal Judge was filed before the defendant has entered his answer. The defendant contends that since said amended complaint was filed after he has filed his motion to dismiss, the first sentence of Section 1, Rule 17, (Supra) is not applicable. But this Court is of the opinion that a motion to dismiss is not a responsive pleading, so that its filing would not deprive the plaintiff of his right to amend his complaint at his pleasure."

We agree to the above ruling for under the provision already above-referred to a party may amend his pleading once as a matter of course at any time before a responsive pleading is served upon him. And it is a matter which cannot be disputed that a motion to dismiss is not a responsive pleading.

Hence, the original complaint filed by Habana could still be amended as a matter of right despite the filing of a motion to dismiss by the Corporation. The trial court was correct when it admitted the amended complaint with two additional causes of action.

Now to the other issues raised in the petition.

Habana seeks the rescission of the compromise agreement under Art. 1191 of the Civil Code.* However, this provision applies only to reciprocal obligations in general and not to obligations arising from a judicial compromise, as we have consistently held in a long line of decisions. Thus:

Judgment upon agreement of the parties is more than a mere contract binding upon them; having the sanction of the court and entered as its determination of the controversy it has the force and effect of any other judgment (Asirot vs. Vda. de Rodriguez 28 SCRA 258 citing Marquez vs. Marquez 73 Phil. 74; also Araneta vs. Perez 7 SCRA 933; Soler vs. Reyes 8 SCRA 691).

Moreover, the rule is that a judgment rendered in accordance with a compromise agreement is immediately executory as there is no appeal from such judgment.

A judgment based on a compromise is generally not appealable. The reason for the rule is that when both parties enter into an agreement to end a pending litigation and request that a decision be rendered approving said agreement, it is only natural to presume that such action constitutes an implicit, as undeniable as an express, waiver of the right to appeal against said decision (World Machine Enterprises vs. IAC 192 SCRA 459 citing Serrano vs. Reyes 110 Phil. 536).

The nullification of a compromise judgment is governed by the following provisions of the Civil Code:

Art. 2038 A compromise in which there is mistake, fraud, violence, intimidation, due influence, or falsity of documents is subject to the provisions of Art. 1330 of this code.

x x x

Art. 1330 A contract where consent is given through mistakes, violence, intimidation, undue influence or fraud is violable.

Art. 1390 The following contracts are violable or annulable, even though there may have been no damage to the contracting parties;

- 1) those where one of the parties is incapable of giving consent to a contract.
- 2) those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

Where the aggrieved party alleges mistake, fraud, violence, intimidation, undue influence, or falsity in the execution of the compromise embodied in a judgment, an action to annul it should be brought before the Court of Appeals, in accordance with Sec. 9 (2) of BP 129, which gives that court exclusive original jurisdiction over inter alia actions for annulment of judgments of regional trial courts.

The other available remedy is a motion for relief from judgment, which may be sought under Rule 38, Secs. 2 to 3, of the Rules of Court, on the ground that the judgment was obtained through fraud, mistake or excusable negligence. This must be filed with the court that rendered the judgment, within 60 days after the petitioner is notified of the judgment and not more than six months after its entry.

Habana admitted that what she really wanted was the recovery of the subject land,[9] and she sought to achieve this by having the judgment rescinded on the ground of default of the Corporation. This, however, is not one of the grounds recognized in the above quoted Art. 2038. The very nature of a compromise judgment bars default as a ground for rescission.

When the terms of a compromise judgment are violated, the remedy of the aggrieved party is to move for its execution, not its invalidation. In fact, the court has inherent powers to prevent its decision from becoming a dead letter and may hold the judgment debtor in contempt if it finds the refusal to be malicious and systematic. It may even place the property under receivership under Rule 39, Sec. 43, of the Rules of Court.[10]

On the assumption that Habanas' action was really for the execution of the compromise judgment, the trial court still would not have had the jurisdiction to act upon it. Execution of a judgment through an independent action is possible only when it is established that the judgment has become dormant, and not before, as clearly provided in Rule 39, Sec. 6, of the Rules of Court, reading as follows:

Sec. 6. Execution by motion or by independent action. - A judgment may be executed on motion within five (5) years from the date of its entry or from the date it became final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

As the Court observed in *Tan Ching Ji v. Mapalo*,[11] this section clearly and logically contemplates the usual situation where the judgment is susceptible of execution or enforcement the moment it acquires the character of finality.

Irrespective of the date of entry, the determinative issue is not when the judgment became final in the sense that no appeal therefrom could be taken but when it became executory in the sense that it could already be enforced.[12] The reason is that it will be idle to speak of execution or an attempt to obtain a writ for that purpose if the judgment is not yet enforceable.[13]

The question we should therefore address is: At the time the judgment of September 21, 1982, became final, was it also already enforceable?

There are certain provisions in the agreement that could already be enforced then, such as:

7. Within five (5) days from receipt of the Honorable Court's decision approving this Compromise Agreement, plaintiff will pay to defendants the sum of Five Hundred Thousand (P500,000.00) Pesos in lump sum to be credited as partial payments for the unpaid balance mentioned in par. 6 above, and deliver to defendants a check for the sum of P100,000 post dated to February 23, 1983, also as partial payment for the unpaid balance mentioned in par. 6 above.

8. After subtracting the sum of P600,000 stated in par. 7 above, the remaining unpaid balance due from plaintiff to the defendants is One Million Three Hundred Thirty Thousand Nine Hundred Fourteen Pesos and 94/100 (P1,330,914.94), payable in the following manner, to wit.

(a) Said unpaid balance of P1,330,914.94 shall be annotated at the back of the plaintiff's corresponding certificates of title over the properties x x x.

However, Section 8 (c) could not be carried out even after entry of the judgment because its enforcement is made subject to certain future events, to wit:

8. x x x

c) The subject properties will be offered for sale, either in whole or in part, by plaintiff to public under such terms and conditions that plaintiff shall, in its sole discretion, determine to be proper, with no time limit for selling, unless a certain price is reached, estimated at a minimum of thirty-four (P34.00) pesos per square meter, and further subject to future contingent expenses, such as taxes, commissions, right of way expenses, expenses for development and improvement of the properties that plaintiff may undertake, and other related items.

This provision clearly states that the petitioner can start selling the subdivision lots only when the price reaches P34.00 per square meter; and under Section 9 of the agreement** it is from the proceeds of the sales that the balance of the purchase price is to be paid. There is thus a necessity first for the parties to agree that the price has been reached, unless the parties decide instead to bring the matter to the court for determination. As neither of these has been done, the five-year period providing for the execution of the decision upon motion has not yet commenced to run. Hence, the judgment has not yet become dormant so as to justify the institution of an independent action for its enforcement.

The non-dormancy of the decision was determinable from the compromise agreement embodied therein and also appended to the complaint filed by Habana. Evidence was not necessary to establish that the decision could not yet be enforced pending fulfillment of the conditions specified in Section 8 (c) of the agreement. We do not agree with the respondent court that in order to ascertain the dormancy of the decision, it is indispensable to first determine whether it was a condition or a term envisioned by the parties in Article 8 (c) of the agreement. Whatever might have been intended, there is no showing that, as a condition, it had already been fulfilled or that, as a term, it had already expired.

Inasmuch as the action taken by Habana was premature, the Regional Trial Court of Laguna should have dismissed her complaint for lack of a cause of action. There was no special reason to continue the proceeding before it, especially since the defendant Corporation had not even filed its answer to the complaint.

Regarding the third cause of action, we hold that it is before the Regional Trial Court of Manila, which approved the compromise agreement and embodied it in its judgment, that a motion may be filed for the fixing of a period within which the Corporation may comply with its obligation under the judgment. This function pertains to that court under Rule 39, Sec. 6, of the Rules of Court.

WHEREFORE, the petition is GRANTED on the ground that the second and third causes of action alleged by the private respondent are premature. Civil Case No. 1454-90-C in the Regional Trial Court of Laguna is hereby DISMISSED, without prejudice to the filing of the proper motion with the Regional Trial Court of Manila for the fixing of the period for compliance by the petitioner with its obligation under the decision of the court dated September 21, 1982. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Annex C, Rollo pp. 88-95.

[2] Annex E, Rollo pp. 64-75.

[3] 26 SCRA 78.

[4] Annex J, Rollo pp. 115-117.

[5] Guingona, J., ponente, Javellana and Imperial, JJ., concurring.

[6] 65 Phil. 302.

[7] 96 Phil. 845.

[8] 8 SCRA 110.

* Art. 1191. The power to rescind is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

x x x

[9] Annex H, Rollo p. 107

[10] Asirov v. Vda. de Rodriguez 28 SCRA 258.

[11] 37 SCRA 510.

[12] Ibid.

[13] Id.

** Section 9. Out of the proceeds of the sale of subject properties as mentioned in par. 8 above, plaintiff will pay to the defendants their unpaid balance of P1,330,914.94.

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