

THE ANDRESONS GROUP, INC., PETITIONER, VS. COURT OF APPEALS, SPOUSES WILLIE A. DENATE AND MYRNA LO DENATE, RESPONDENTS.

G.R. No. 114928. January 21, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioner, The Andresons Group, Inc., questions the decision[1] of the Court of Appeals which set aside the two orders of the Regional Trial Court of Kalookan City, Branch 122 which denied private respondents' Motion to Dismiss petitioner's complaint on the ground of *lis pendens*.

The facts, as found by the Court of Appeals, show that private respondent Willy Denate entered into an agency agreement with petitioner as its commission agent for the sale of distilled spirits (wines and liquors) in Davao City, three Davao provinces and North Cotabato.

On November 18, 1991, private respondents filed a civil action for collection of sum of money against petitioner before the Regional Trial Court of Davao City, docketed as Civil Case No. 21, 061-91. In the complaint, private respondent Willie Denate alleged that he was entitled to the amount of P882,107.95, representing commissions from petitioner but that the latter had maliciously failed and refused to pay the same.

A month later, or on December 19, 1991, petitioner likewise filed a complaint for collection of sum of money with damages and prayer for the issuance of a writ of preliminary attachment against private respondent with the Regional Trial Court of Kalookan City, Branch 22, docketed as Civil Case No. C-15214. Petitioner alleged in the complaint that private respondent still owed it the sum of P1,618,467.98 after deducting commissions and remittances.

On February 5, 1992, private respondent filed a Motion to Dismiss Civil Case No. C-15214 with the Kalookan RTC on the ground that there was another action pending between the same parties for the same cause of action, citing the case earlier filed with the RTC of Davao City.

On February 14, 1992, petitioner filed its opposition to the Motion to Dismiss on the ground that the RTC of Davao had not acquired jurisdiction over it.

On April 24, 1992, the RTC of Kalookan City issued the questioned order, the decretal portion of which states:

"The Court finds the instant motion without merit.

Admittedly, the Davao case involves the same parties, and involves substantial identity in the case of action and reliefs sought, as in the instant case.

Perusal of the record in this case, however, shows that jurisdiction over the parties has already been acquired by this Court, as herein defendants received their summons as early as January 8, 1992, and the plaintiff's prayer for issuance of a writ of preliminary attachment has been set for hearing last January 21, 1992, but

which hearing was cancelled until further notice because of the filing of the instant motion to dismiss by the defendants herein on February 17, 1992, after asking for extension of time to file their responsive pleading. Clearly, the instant case has been in progress as early as January of this year. On the other hand, the summons in the Davao case has not yet been served as of April 21, 1992, the date of the hearing of the instant motion, so much so that the said Davao Court has not yet acquired jurisdiction over the parties."

On May 29, 1992, private respondents filed a Motion for Reconsideration, which was denied by the trial court on July 1, 1992. The case was then elevated to the Court of Appeals which set aside the order of the trial court.

Hence, this petition.

The sole issue set for resolution before the Court is: Should the action in the Kalookan RTC be dismissed on the ground of *lis pendens*?

We hold in the affirmative.

Lis pendens as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action.[2] To constitute the defense of *lis pendens*, it must appear that not only are the parties in the two actions the same but there is substantial identity in the cause of action and relief sought.[3] Further, it is required that the identity be such that any judgment which may be rendered in the other would, regardless of which party is successful, amount to *res judicata* on the case on hand.[4]

All these requisites are present in the instant case. The parties in the Davao and Caloocan cases are the same. They are suing each other for sums of money which arose from their contract of agency. As observed by the appellate court, the relief prayed for is based on the same facts and there is identity of rights asserted. Any judgment rendered in one case would amount to *res judicata* in the other.

In conceptualizing *lis pendens*, we have said that like *res judicata* as a doctrine, *litis pendentia* is a sanction of public policy against multiplicity of suits.[5] The principle upon which a plea of another action pending is sustained is that the latter action is deemed unnecessary and vexatious.[6]

Petitioner asserts that the Davao Court had not yet acquired jurisdiction over the parties as the summons had not been served as of April 21, 1992 and it claims that pendency of a case, as contemplated by the law on *lis pendens*, presupposes a valid service of summons.

This argument is untenable. A civil action is commenced by filing a complaint with the court.[7] The phraseology adopted in the Rules of Court merely states that another action pending between the same parties for the same cause is a ground for motion to dismiss. As worded, the rule does not contemplate that there be a prior pending action, since it is enough that there is a pending action.[8] Neither is it required that the party be served with summons before *lis pendens* should apply.

In *Salacup v. Maddela*,[9] we said:

"The rule of *lis pendens* refers to another action. An action starts only upon the filing of a complaint in court.

The fact that when appellant brought the present case, it did not know of the filing of a previous case against it by appellees, and it received the summons and a copy of the complaint only after it had filed its own action against them, is immaterial. Suffice it to state that the fact is, at the time it brought the present case, there was already another pending action between the same parties seeking to assert identical rights with identical prayers for relief based on the same facts, the decision in which would be *res judicata* herein."

It must be emphasized that the rule on *litis pendentia* does not require that the later case should yield to the earlier.[10] The criterion used in determining which case should be abated is which is the more appropriate

action[11] or which court would be "in a better position to serve the interests of justice." [12]

Applying these criteria, and considering that both cases involve a sum of money collected in and around Davao, the Davao Court would be in a better position to hear and try the case, as the witnesses and evidence would be coming from said area.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Costs against petitioner.
SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Rollo , p. 30.

[2] Rule 16, Sec. 1 (e.), Revised Rules of Court.

[3] J. Northcatt and Co. v. Villa-Abrille, 41 Phil. 462.

[4] Alarcon v. Torres, 19 SCRA 706 (1967); Del Rosario v. Jacinto, 15 SCRA 15 (1965); Olayvar v. Olayvar, 51 O.G. 5219; Hongkong and Shanghai Bank v. Alderva, 30 Phil. 285; Manuel v. Wigett, 14 Phil. 9.

[5] Investors Finance Corp. v. Elarde, 163 SCRA 60 (1988).

[6] Victrionics Computers, Inc. v. Logarto, 217 SCRA 517 (1993); Arceo v. Oliveros, 134 SCRA 308 (1985).

[7] Rule 2, Sec. 6, Rules of Court.

[8] Teodoro v. Mirasol, 53 O.G. No. 22, p. 8088.

[9] 91 SCRA 275, 279 (1979), citing Pampanga Bus Co., Inc. v. Ocfemia, 18 SCRA 407 (1966).

[10] Ramos v. Peralta, 203 SCRA 412 (1991).

[11] Teodoro v. Mirasol, supra.

[12] Roa-Magsaysay v. Magsaysay, 98 SCRA 592 (1980).

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