

JUAN M. CASIL, PETITIONER, VS. COURT OF APPEALS; HON. URBANO VICTORIO, SR., BRANCH 50, REGIONAL TRIAL COURT, MANILA; AND ANITA U. LORENZANA, RESPONDENTS.

G.R. No. 121534. January 28, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When may a complaint be dismissed on the ground of *litis pendentia*? When is an interlocutory order assailable by certiorari under Rule 65?

The Case

These are the main questions raised in this petition for review on certiorari seeking to set aside the Decision[1] of Respondent Court of Appeals[2] in CA-G.R. SP No. 37626 promulgated on August 21, 1995. The dispositive portion of the assailed Decision reads:[3]

“WHEREFORE, in view of the foregoing, the instant Petition for Certiorari, Prohibition, Mandamus, with a prayer for a Temporary Restraining Order/Writ of Preliminary Injunction is hereby DENIED for lack of merit.”

The Court of Appeals affirmed, in effect, the order[4] of the Regional Trial Court of Manila, Branch 50, which denied petitioner’s motion to dismiss grounded on *litis pendentia*.

The Facts

The facts are undisputed. Private Respondent Anita U. Lorenzana is the lessee of a government property located on Bilibid Viejo Street, near Quezon Boulevard, Manila. After the building on said land was destroyed by fire, Petitioner Juan M. Casil and private respondent entered into a written agreement authorizing the former to develop and administer the property. They also agreed that rentals from the tenants would be divided equally between them. Thus, buildings, stalls and cubicles were constructed on the subject property and leased to tenants. According to private respondent,[5] petitioner remitted the amount of P64,000 for the months of March and April 1994. Thereafter, the remittances decreased. Private respondent allegedly found that the tenants, except for one or two, had been paying their rentals on time, but that petitioner was not properly remitting her share thereon. Thus, she wrote the tenants informing them that she had already terminated her contract with petitioner and urging them to pay directly to her. Petitioner countered by asking them to ignore private respondent’s letter.

On December 2, 1994, petitioner[6] filed a complaint against private respondent for “Breach of Contract and Damages” docketed as Civil Case No. 94-72362 before Branch 45 of the Regional Trial Court of Manila, hereafter referred to as “First Case.” Petitioner prayed as follows:[7]

“WHEREFORE, premises considered, it is most respectfully prayed that, after hearing, judgment be rendered in favor of the plaintiff and against the defendant ordering her:

(1) to respect, abide by and comply with the terms and conditions of the agreement after the Honorable Court

shall have upheld its existence and validity;

(2) in the alternative and at the option of the plaintiff, to order the defendant to reimburse and refund the plaintiff of his investments in the property in question in the amount of more than P1,000,000.00, with legal interests from January 1994 and until the said amount is fully paid;

(3) to pay the plaintiff moral damages suffered by him in the amount of P1,000,000.00, more or less;

(4) to pay the plaintiff exemplary damages in the amount of P500,000.00, more or less;

[5] to pay the plaintiff by way of attorney's fees in the amount of P200,000.00, plus the costs of suit."

Private respondent filed her answer in the First Case on March 14, 1995, praying:[8]

"WHEREFORE, in view of the foregoing it is respectfully prayed:

- That the complaint be dismissed for lack of cause of action;
- That plaintiff be ordered to render accounting on the rents he received from the stall holders from the time he collected the deposits/advance rentals to the present and to deposit such amounts as were given/deposited with him in court;
- That the Honorable Court orders the collection of the rentals in the stalls and that the same be deposited in court subject to the disposition of the Honorable Court;
- That the plaintiff be ordered to pay the defendant the following:
 - The amount of P500,000.00 as the unremitted amount of owner's share of the defendant but which the plaintiff had withheld; the additional amounts which continue to grow because of the continues forbearance by the plaintiff in remittance;
 - The amount of P50,000.00 as actual and compensatory damages, expenses of litigation and attorney's fees;
 - To pay moral damages in the amount of P500,000.00.
 - To pay corrective and exemplary damages in the amount of P100,000.00;

Defendant prays for such other reliefs as are just and equitable in the premises."

However, before submitting her answer in the First Case, private respondent[9] filed on January 11, 1995 before Branch 50 of the Regional Trial Court of Manila, her own separate complaint against petitioner for "Rescission of Contract, Accounting and Damages," docketed as Civil Case No. 95-72598, hereafter referred to as "Second Case." Private respondent prayed for the following reliefs:[10]

"WHEREFORE, in view of the foregoing, it is respectfully prayed of the Honorable Court that after hear[ing] judgment be rendered:

- Ordering the deposit of the rental into the Court's custody for proper disposition of the collected amount in accordance with the judgment of the Court;
- Ordering the defendant the payment of plaintiff's share in accordance with Annex 'A' of this complaint;
- Ordering the defendant to pay his arrears, unremitted to plaintiff in the amount of P245,000 or more;
- Ordering the defendant to pay the plaintiff the sum of P50,000 as actual and compensatory damages and expenses of litigation and attorney's fees;
- Ultimately ordering the agreement known as Annex 'A' as canceled due to violations thereon perpetuated by

the defendant making implementation impractical;

- Plaintiff prays for such other reliefs as are just and equitable in the premises.”

On March 13, 1995, petitioner countered with a motion to dismiss the Second Case on the ground of *litis pendentia*.^[11] Subsequently, private respondent filed her opposition to said motion.^[12]

Thereafter, on June 1, 1995, Judge Urbano C. Victorio, Sr. denied the motion.^[13] The Court of Appeals subsequently dismissed the petition for *certiorari*, thereby affirming the trial court’s denial of the said motion.

Hence, this recourse.^[14]

The Issue

Petitioner raises a single issue:^[15]

“The central issue that is before this Honorable Court is whether or not the two cases, Civil Case No. 94-72363 x x x and Civil Case No. 95-72598, x x x, both of which involve the same contract and same transaction, should be allowed to be litigated independently and separately of each other.”

Respondent Court’s Ruling

In holding that there was no *litis pendentia*, the Court of Appeals ratiocinated as follows:

“Jurisprudence dictates that:

‘x x x x x x x x x

For *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *sres* [sic] *adjudicata* to the other. (*Ramos v. Ebarle*, 182 SCRA 245 citing *Marapao v. Mendoza*, 119 SCRA 97 and *Lopez v. Villaruel*, 164 SCRA 616.)

Applying the foregoing criteria to the case at bar. We note that except for the identity of parties, there appears to be a great disparity between the cause of action and reliefs prayed for in Civil Case No. 94-72362 and that in Civil Case No. 95-72598.

xxx xxx

In fine, while plaintiff [petitioner herein] in Civil Case No. 94-72362 seeks to enforce the agreement allegedly entered into between the parties on 04 May 1994 or in the alternative, for the reimbursement and refund of his investment in the property subject of the suit plus damages, the plaintiff [private respondent herein] in Civil Case No. 95-72598 prays for judgment ordering the deposit of rentals, damages and the cancellation of the agreement known as Annex “A” for violation of its terms and conditions by the defendant therein.

In recapitulation, Civil Case, No. 94-72362 seeks to enforce the Agreement, Annex “A”, while Civil Case No. 95-72598 is for the repudiation or cancellation of the said agreement on the ground of violation of its terms and conditions. It is therefore clear that the ground relied upon in petitioner’s Motion to Dismiss is without basis in fact or in law. Consequently, this Court does not find that respondent Court acted in any manner in contravention of law to justify the relief prayed for.”

The Court of Appeals also held that an interlocutory order denying a motion to dismiss could not be the basis of a petition for *certiorari*.

The Court’s Ruling

The petition is meritorious.

Preliminary Issue: When May an Interlocutory Order Be Reviewed on Certiorari?

Reiterating the position of the Court of Appeals, private respondent contends that the June 1, 1995 order of the Regional Trial Court denying the motion to dismiss is an interlocutory order which cannot be questioned in a petition for certiorari.[16] Indeed, basic is the doctrine that “the denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by certiorari; it cannot be [the] subject of appeal, until final judgment or order is rendered.” [17] But this rule is not absolute.

In *National Union Fire Insurance Company of Pittsburg vs. Stolt-Nielsen Philippines, Inc.*, [18] an insurer filed an action against a carrier for the recovery of a sum of money it had allegedly paid to the insured shipper. The carrier filed a motion to dismiss questioning the jurisdiction of the trial court, claiming that the case was arbitrable in accordance with the bill of lading and charter party. The trial court initially denied the motion but subsequently ordered the suspension of its resolution, “since the ground alleged in said motion does not appear to be indubitable.” Through a petition for certiorari, the carrier questioned the order of the trial court. Invoking the argument now raised by private respondent, the insurer in that case challenged the resort to certiorari. In sustaining the propriety of a petition for certiorari, this Court ruled:[19]

“Generally, this would be true. However, the case before us falls under the exception. While a Court Order deferring action on a motion to dismiss until the trial is interlocutory and cannot be challenged until final judgment, still, where it clearly appears that the trial Judge or Court is proceeding in excess or outside of its jurisdiction, the remedy of prohibition would lie since it would be useless and a waste of time to go ahead with the proceedings (*University of Sto. Tomas vs. Villanueva*, 106 Phil. 439, [1959] citing *Philippine International Fair, Inc. et al., vs. Ibañez, et al.*, 94 Phil. 424 [1954]; *Enrique vs. Macadaeg, et al.*, 84 Phil. 674 [1949]; *San Beda College vs. CIR*, 97 Phil. 787 [1955]). Even a cursory reading of the subject Bill of Lading, in relation to the Charter Party, reveals the Court’s patent lack of jurisdiction to hear and decide the claim.”

Additionally, certiorari is an appropriate remedy to assail an interlocutory order (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion[20] and (2) when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief. Here, the Court may allow certiorari as a mode of redress.[21]

Justice Florenz D. Regalado, in his *Remedial Law Compendium*, cited these exceptions:[22]

“However, even when appeal is available and is the proper remedy, the Supreme Court has allowed a writ of certiorari (1) where the appeal does not constitute a speedy and adequate remedy (*Salvades vs. Pajarillo, et al.*, 78 Phil. 77), as where 33 appeals were involved from orders issued in a single proceeding which will inevitably result in a proliferation of more appeals (*PCIB vs. Escolin, et al.*, L-27860 and 27896, Mar. 29, 1974); (2) where the orders were also issued either in excess of or without jurisdiction (*Aguilar vs. Tan*, L-23600, Jan. 30, 1970; *Cf. Bautista, et al. vs. Sarmiento, et al.*, l-45137, Sept. 23, 1985); (3) for certain special considerations, as public welfare or public policy (*See Jose vs. Zulueta, et al.*, L-16598, May 31, 1961 and cases cited therein); (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal there could be no remedy (*People vs. Abalos*, L-29039, Nov. 28, 1968); (5) where the order is a patent nullity (*Marcelo vs. De Guzman, et al.*, L-29077, June 29, 1982); and (6) where the decision in the certiorari case will avoid future litigations (*St. Peter Memorial Park, Inc. vs. Campos, et al.*, L-38280, Mar. 21, 1975).

The foregoing clearly show that the rule invoked by private respondent is not ironclad. As will be shown later, the present case constitutes an exception because the RTC committed grave abuse of discretion equivalent to lack or excess of jurisdiction in denying the motion to dismiss. An appeal, while available eventually, is cumbersome and

inadequate, for it requires the parties to undergo a useless and time-consuming trial. The Second Case constitutes a rude imposition on the time and the docket of the judiciary.

Single Issue: Is there Litis Pendentia in this Case?

Petitioner contends that the First and the Second Cases “are exactly the same.” He avers that the “allegations in the Affirmative Defenses in the Answer, as well as in the Counterclaim in this 1st case are, word for word, the same as the allegations in the complaint in the 2nd case, EXCEPT THAT IN THE 2nd CASE, there is an additional prayer, namely, for the rescission of the contract, subject of the two cases.”[23] Thus, the filing of the Second Case by private respondent constitutes splitting a single cause of action, contrary to Rule 2, Section 3 of the Rules of Court.[24]

Private respondent disagrees with the above contention, arguing that there is no identity of reliefs sought or of causes of action in the two cases. She points out that in the First Case, petitioner prayed for the enforcement of the agreement; in the Second Case, on the other hand, private respondent asked for the rescission of the agreement. Furthermore, she argues that res adjudicata does not apply, thus: “[i]n the event that the trial court in Civil Case No. 94-72362 [First Case] renders a decision finding that no breach was committed by Private Respondent here and that no damages are awarded in favor of Petitioner, this judgment would not constitute res adjudicata in the present case because a judgment declaring that the contract should be rescinded can still be rendered in the [S]econd [C]ase.”

We sustain the petitioner. In order that an action may be dismissed on the ground of litis pendentia, the following requisites must concur: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res adjudicata in the other.[25]

It is undisputed that the parties in the two civil actions are the same. In both actions, the two parties invoke their respective rights: petitioner wants to be respected as administrator and developer of the subject property, while private respondent asserts her right as a lessee of the subject government property, and her entitlement to an equal share from rentals collected by petitioner. Moreover, the reliefs prayed for are in substance the same. First, it should be noted that the reliefs prayed for by all parties are founded on the same facts and will thus require identical evidence. Private respondent as lessee of the government property and petitioner as developer of the same have agreed to share equally between them the rentals from the developed property. Second, private respondent’s complaint in the Second Case and her answer in the First Case contained basically the same allegations, except the prayer for rescission in her complaint.

Furthermore, any judgment in the First Case will serve as res adjudicata to the Second Case. The requisites of res adjudicata are as follows:[26]

- “(a) The former judgment or order must be final;
- (b) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case;
- (c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and
- (d) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two actions are substantially between the same parties.”

The Court of Appeals held that there can be no res adjudicata because there is no identity of causes of action between the two cases. We do not agree. In the two cases, both petitioner and private respondent brought to fore

the validity of the agreement dated May 4, 1994. Private respondent raised this point as an affirmative defense in her answer in the First Case. She brought it up again in her complaint in the Second Case. A single issue cannot be litigated in more than one forum. As held in *Mendiola vs. Court of Appeals*:^[27]

“The similarity between the two causes of action is only too glaring. The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. In Civil Case No. 58713, the action is to enjoin PNB from foreclosing petitioner’s properties, while in Civil Case No. 60012, the action is one to annul the auction sale over the foreclosed properties of petitioner based on the same grounds. Notwithstanding a difference in the forms of the two actions, the doctrine of *res judicata* still applies considering that the parties were litigating for the same thing, i.e. lands covered by TCT No. 27307, and more importantly, the same contentions and evidence as advanced by herein petitioner in this case were in fact used to support the former cause of action.” (Underscoring supplied.)

In this light, there is identity of subject matter and of causes of action, for the same evidence presented in the First Case will necessarily be presented in the Second Case, and the judgment sought in the Second Case will either duplicate or contradict any judgment in the First Case.^[28] It is beyond dispute, therefore, that a judgment in the First Case will constitute *res adjudicata* to bar the Second Case.

Manifestly, there is no legal basis for allowing the two actions to proceed independently of each other. In fact, a mere amendment^[29] in the private respondent’s Answer in the First Case to include a prayer for rescission would render the assailed complaint unnecessary and redundant.^[30] And even without such amendment, rescission may still be granted in view of the general prayer invoking such other reliefs as are just and equitable in the premises. Of relevance in this case is *Pichay vs. Kairuz*,^[31] in which this Court ruled:

“We find no merit in this appeal. To begin with, it cannot be disputed that the present case is predicated upon the plea that the power of attorney and the deed of mortgage which were allegedly executed by appellants are null and void on the ground that their consent thereto was obtained through fraud and intimidation. Here, the principal defendant is Michael Kairuz. On the other hand, in Civil Case No. 423, the complaint was filed by Michael Kairuz to recover certain amount of money making as defendants the same parties who appear as plaintiffs herein. And in both cases the parties brought to the fore the validity of the same documents. Then, while the second case was pending trial, the court rendered judgment in the first case dismissing the complaint based on the finding that said two documents are null and void. The court even went further. It ordered plaintiffs to pay to defendants the sum of P12,650.00, as damages, plus an additional sum of P2,000.00 as attorney’s fees. These facts show that the two cases really involve the same parties, the same subject matter, and the same cause of action. Indeed, appellants herein not only obtained in the first case the relief they sought to obtain in the second but even obtained a judgment in their favor by way of damages and attorney’s fees. The attitude of appellants in insisting on prosecuting the second case in spite of such favorable judgment is indeed beyond comprehension.”

Rules Require Liberal Construction

It must be stressed that the Rules of Court seek to eliminate undue reliance on technical rules and to make litigation as inexpensive, as practicable and as convenient as can be done.^[32] This is in accordance with the primary purpose of the Rules of Court as provided in Rule 1, Section 2, which reads:

“Section 2. Construction. These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.”

Private respondent’s insistence on the continuation of the Second Case, separate from the First Case, violates this hallowed objective of the Rules of Court. Splitting a cause of action makes a mockery of this Court’s crusade to

unclog the dockets of the judiciary.

As a final note, the following guidelines for the dismissal of a complaint on the ground of *litis pendentia* laid down by this Court in *Allied Banking Corporation vs. Court of Appeals* should be taken into account:[33]

“Given, therefore, the pendency of two actions, the following are the relevant considerations in determining which action should be dismissed: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.”

Since the First Case was filed earlier, it will be in accord with jurisprudence to abate the Second Case.

WHEREFORE, the assailed Decision is REVERSED and SET ASIDE. Private Respondent Anita U. Lorenzana’s Complaint in Civil Case No. 95-72598 is hereby DISMISSED. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 18-24.

[2] Ninth Division composed of J. Pacita Cañizares-Nye, ponente; and JJ. Jorge S. Imperial and Romeo J. Callejo, Sr., concurring.

[3] CA Decision, p. 7; rollo, p. 24.

[4] Rollo, p. 61.

[5] Private Respondent’s Memorandum, p. 7; rollo, p. 145.

[6] Then represented by Atty. Abelardo E. Rogacion.

[7] Petitioner’s Complaint, pp. 6-7; rollo, pp. 31-32.

[8] Private Respondent’s Answer, pp. 9-10; rollo, pp. 44-45.

[9] Then represented by Atty. Salacnib F. Bateria, who also signed private respondent’s Answer with Counterclaim.

[10] Private Respondent’s Complaint, p. 6; rollo, p. 51.

[11] Section 1, Rule 16 of the Rules of Court provides:

“”SEC. 1. Grounds. – Within the time for pleading a motion to dismiss the action may be made on any of the following grounds: xxx

(e) That there is another action pending between the same parties for the same cause.”

[12] Rollo, pp. 56-61.

[13] Rollo, p. 61.

[14] The case was deemed submitted for resolution upon this Court’s receipt of private respondent’s Memorandum dated February 23, 1996 on March 7, 1996.

[15] Petition, pp. 8-9; rollo, pp. 10-11.

[16] Private Respondent's Memorandum, p. 9; rollo, p. 147.

[17] Santiago Land Development Company vs. Court of Appeals, 258 SCRA 535, 540-541, July 9, 1996, per Torres, J.

[18] 184 SCRA 682, April 26, 1990, per Melencio-Herrera, J.

[19] at p. 686.

[20] Pacete vs. Carriaga, Jr., 231 SCRA 321, 327, March 17, 1994; Lina vs. Court of Appeals, 135 SCRA 637, April 9, 1985; Garcia vs. Court of Appeals, 209 SCRA 732, June 11, 1992; Dimayacyac vs. Court of Appeals, 93 SCRA 265, September 27, 1979; Government Service Insurance System vs. National Food Authority, 249 SCRA 522, October 25, 1995; Planters Products, Inc. vs. Court of Appeals, 193 SCRA 563, 570, February 6, 1991; De la Paz, Jr. vs. Intermediate Appellate Court, 154 SCRA 65, September 17, 1987; Del Mundo vs. Court of Appeals, 252 SCRA 432, January 29, 1996.

[21] Salcedo-Ortañez vs. Court of Appeals, 235 SCRA 111, 114, August 4, 1994, citing Marcelo v. de Guzman, 114 SCRA 657, June 29, 1982,

[22] Regalado, Remedial Law Compendium, Vol. I, fifth revised edition, pp. 458-459.

[23] Petition, p. 9; rollo, p. 10. Capitalizations found in the original.

[24] "Section 3. One suit for single cause of action. A party may not institute more than one suit for a single cause of action."

[25] Cokaliong Shipping Lines, Inc. vs. Amin, 260 SCRA 122, July 31, 1996, per Mendoza, J.; Olayvar vs. Olayvar, 98 Phil. 52, 54, November 29, 1955; Manuel vs. Wigett, 14 Phil. 9, August 18, 1909; Hongkong and Shanghai Bank vs. Aldecoa and Co., 30 Phil. 255, March 23, 1915; J.M. Tuason & Co. vs. Rafor, 5 SCRA 478, 483-484, June 30, 1962; Del Rosario, et al vs. Jacinto, et al., 15 SCRA 15, 17, September 10, 1965; Pampanga Bus Co. vs. Ocfemia, et al., 18 SCRA 407, 409-410, October 20, 1966.

[26] Regalado, Remedial Law Compendium, Vol. I, fifth revised edition, p. 308.

[27] 258 SCRA 492, July 5, 1996, per Hermosisima, J. See also Olayvar vs. Olayvar (supra, at pp. 54-55, November 29, 1955, per Bautista Angelo, J) where it was ruled:

"In order that an action may be dismissed on the ground that 'there is another action pending between the same parties for the same cause' [Rule 8, section 1 (d)], the following requisites must concur: (1) the identity of parties, or at least such as representing the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to res adjudicata in the other. (Moran, Comments on the Rules of Court, 1952 ed., Vol. I, p. 169.) Do these requisites concur in the two cases under consideration?

An analysis of the facts deducible from the pleadings would reveal an affirmative answer. Note that the present action is for support not only of plaintiff but of her children. The action is predicated on the infidelity of defendant who because of his propensity towards other women made him neglectful of his marital duties. The case of legal separation, on the other hand, asserts adultery on the part of plaintiff which is a valid defense against an action for support (Quintana vs. Lerma, 24 Phil., 285). Our new Civil Code provides that the obligation to give support shall cease 'when the recipient, be he a forced heir or not, has committed some act which gives rise to disinheritance' [Article 303 (4)], and under Article 921 of the same Code, it shall be

sufficient cause for disinheritance ‘when the spouse has given cause for legal separation.’ It further appears that in the separation case the wife interposed an answer wherein, repudiating the charge of adultery, she demanded that she and her children be given the proper maintenance and support to which they are entitled under the law.

All the foregoing show that the two cases raise practically the same issues. There is therefore no need of prosecuting them separately and independently for that would amount to duplicity of action. And as it appears that the case of legal separation was instituted earlier than the one for support, it is fair that the latter be dismissed as was correctly done by the lower court.”

[28] *Mangoma vs. Court of Appeals*, 241 SCRA 21, February 1, 1995; *Gitgano vs. Borromeo*, 133 SCRA 437, November 29, 1984; *Vda. de Vocal vs. Vda. de Suria*, 90 SCRA 336, May 31, 1979; *Aroc vs. People’s Homesite and Housing Corporation*, 81 SCRA 350, January 31, 1978; *Tan vs. Valdehueza*, 66 SCRA 61, August 6, 1975; *Cayco, et al., vs. Cruz, et al.*, 106 Phil. 65, August 21, 1959; *I Martin*, pp. 161-162, citing 34 C.J. 805.

[29] Section 1, Rule 10 of the Rules of Court reads:

“Section 1. Amendments in general. -- Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.”

[30] The similarity in the allegations in both Complaint and Answer is apparent as shown below:

On allegations for cancellation of Contract:

In the Answer with Counterclaim in the Second Case (Rollo, pp. 42-43):

“11.13. That the defendant repleads and incorporates the pertinent allegations of the preceding paragraph in this affirmative and special defenses; that by reason of the unlawful withholding by the plaintiff, Juan M. Casil of the share of the defendant’s, defendant wrote the plaintiff for the cancellation of the contract Annex ‘B’ because the same plaintiff has not observed its provisions, much less talk about the matter, the letter of the defendant is hereto attached as Annex ‘3’ and is made an integral part hereof;

11.14. That the plaintiff instead of meeting with the defendant to put the parties in harmony has sent the latter a strongly worded answer which neither admitted that he was remiss of his obligation under Annex ‘4’ nor has alleged that he has fully satisfied the provisions thereof, but assailing the letter, Annex ‘3’ as unchristian and unfriendly and categorically stating that he does ‘not see any possibility of any amicable or friendly settlement of the matter except through the courts’ and in the meantime, plaintiff’s collection remains unabated, refusing to remit the lawful share of the defendant; x x x”

In the Complaint in the First Case (Rollo, pp. 49-50):

“16. That by reason of the unlawful withholding by the defendant of the share of the plaintiff, wrote the defendant in order to cancel the contract Annex ‘A’, because the same defendant has not observed its provisions, much less to talk about the matter, the letter of the plaintiff is hereto attached as Annex ‘B’ and is made an integral part hereof;

17. That the defendant instead of meeting with the plaintiff to put the parties in harmony has sent the latter a strongly worded answer which neither admitted that he was remiss of his obligation under Annex ‘A’ nor has alleged that he has fully satisfied the provisions thereof, but assailing the letter, Annex ‘B’ as unchristian and unfriendly and categorically stating that he does ‘not see any possibility of any amicable or friendly settlement of the matter except through the courts’ and in the meantime, defendant’s collection remains unabated, refusing to remit the lawful share of the plaintiff;”

[31] 5 SCRA 29, 30-31, May 18, 1962, per Bautista Angelo, J.

[32] Francisco, Vicente, J., The Revised Rules of Court in the Philippines, Vol. I, 1973 ed., pp. 155-156 citing an article of Professor Sunderland in the University of Cincinnati Law Review, Vol. XIII, No. 1.

[33] 259 SCRA 371, July 26, 1996, per Mendoza, J.

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