

**SPS. ISIDRO “ABEL” CRUZ[] AND LEA CRUZ,
PETITIONERS, VS. SPS. FLORENCIO AND AMPARO CARAOS,
NATIVIDAD CARAOS, SPS. MAXIMO AND LUISA BANGONON, SPS.
FEDERICO AND SUSAN GARCIA, SPS....**

G.R. NO. 138208. April 23, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court, petitioners Sps. Isidro Cruz and Lea Cruz assail the Decision[1] dated 6 January 1999 and Resolution[2] dated 24 March 1999 of the Court of Appeals in CA-G.R. SP No. 41978, which annulled and set aside the Order,[3] dated 28 June 1996 of the Regional Trial Court (RTC), Branch 118, Pasay City, in Civil Case No. 96-0225, dismissing respondents' Complaint for Specific Performance, Declaration of Nullity of Contract and Damages.

The antecedents follow:

On 7 February 1996, respondents Sps. Florencio and Amparo Caraos, Natividad Caraos, Sps. Maximo and Luisa Bangonon, Sps. Federico and Susan Garcia, Sps. Enrique and Aurora Lopez Garcia, Sps. Benjamin and Violeta Pepito, Sps. Diopanes and Josefina Sugang, Sps. Jelmer and Maryrish Sugang, Teresita Murchante, Lita Lopez, Brenda Mamaril, and Roberto Su filed with the RTC, Branch 118, Pasay City, a Complaint[4] for Specific Performance, Declaration of Nullity of Contract and Damages against petitioners, Sps. Isidro and Lea Cruz (petitioners). The case was docketed as Civil Case No. 96-0225.

In their Complaint, respondent averred, inter alia: that the parties are occupants of a parcel of land located at No. 95 Sporting Club, P. Villanueva St., Pasay City (subject lot) which was then covered by TCT No. 5609, and registered under the name of Bill Brothers, Inc. Sometime in December 1972, petitioner Isidro Cruz (Isidro) initiated the formation of the Sporting Club Multi-purpose Home/Merchandising Cooperative for the purpose of acquiring the lots where the houses are built, and distributing the same among its members. He was likewise elected president of the cooperative with respondents as members thereof. In the process, Isidro required the members of the cooperative to contribute the amount of twenty pesos (P20.00) daily for operational expenses, as well as the amount of five thousand pesos (P5,000.00) each to serve as downpayment to Bill Brothers, Inc. in the acquisition of the subject lot. Isidro collected the total amount of P131,981.45, which funds were deposited in the name of the cooperative with the Development Bank of the Philippines (DBP). On 12 September 1994, Isidro called a special meeting where he declared that a resolution be passed authorizing the treasurer to withdraw the amount of P110,000.00 to be used as downpayment in the purchase of the subject lot. During the meeting, it was agreed upon that the subject lot should be distributed among themselves. On 11 October 1994, petitioners approached the members of the cooperative, asking them to affix their signatures over their typewritten names on a blank piece of paper on the assurance that the same will be used in securing a financing scheme in the payment of the lot to finance the housing project of the cooperative. However, contrary thereto, the sheet of paper

containing respondents' signatures was attached by the petitioners to a Contract of Lease. It appears that the former, without the knowledge and consent of the members of the cooperative had entered into a Contract of Sale with Bill Brothers, Inc., using the funds of the cooperative which they were able to withdraw from the DBP.

Respondents alleged further that on 17 October 1994, they received demand letters from petitioners' counsel, obliging them to pay rentals in arrears amounting to P27,000.00 each and to vacate the subject lot. Respondents attempted to settle and negotiate with the petitioners but the latter refused to cooperate. Instead, petitioners filed a case for ejectment against respondents with the Metropolitan Trial Court (MeTC), Branch 47, Pasay City, which case was docketed as Civil Case No. 173-95. Subsequently, the Lupong Tagapamayapa issued a Certification to File Action for failure of the parties to settle the matters contested herein. Likewise, respondents filed a Criminal Complaint for Estafa against petitioners for their deceit, fraud, and manipulation in obtaining the subject lot, pending with the RTC, Branch 108, Pasay City, and docketed as Criminal Case No. 95-7724. Finally, respondents prayed that petitioners be ordered to sell the subject lot in favor of respondents on installment basis pursuant to the original intention of the parties; that the Contract of Lease between the parties be declared null and void; that petitioners be ordered to pay respondents moral and exemplary damages, attorney's fees, and other reliefs just and equitable under the premises.

On 5 March 1996, petitioners filed a Motion to Dismiss the Complaint in Civil Case No. 96-0225, RTC, Branch 118, Pasay City, on the ground of forum shopping.[5] In the main, they asserted that Civil Case No. 96-0225 is but a reiteration of a previous complaint, docketed as Civil Case No. 95-1387 filed by respondents against petitioners with the RTC, Branch 117, Pasay City, for Specific Performance, Declaration of Nullity of Contract and Damages, which involved identical issues which had been dismissed on 20 November 1995, by the RTC, Branch 117, Pasay City[6] on the ground of forum shopping. The RTC, Branch 117, in Civil Case No. 95-1387, said that there is a pending ejectment case between the parties before the MeTC, Branch 47, and also a pending case between the parties before the Lupong Tagapagkasundo for specific performance. Respondents' Motion for Reconsideration of the dismissal of the case was similarly denied.[7] In fine, petitioners asseverated that as respondents' complaint in Civil Case No. 95-1387 had long been dismissed, respondents' Complaint in Civil Case No. 96-0225, containing the same allegations as in the former case must necessarily be dismissed on the ground of forum shopping.

Resolving petitioners' Motion to Dismiss in Civil Case No. 96-0225, the RTC rendered an Order[8] dated 28 June 1996, granting the dismissal sought. The RTC rationalized that even a mere perusal of the respondents' Complaint in Civil Case No. 96-0225 and their Complaint against petitioners in Civil Case No. 95-1387 filed with the RTC, Branch 117, Pasay City, would reveal that both pleadings contain similar allegations and causes of action. It likewise ruled that there was forum shopping as the said Complaint was filed apparently to obtain a favorable action for the respondents.[9] According to the RTC:

A perusal of the records of this case, particularly the present Complaint and Annex "A" of the [petitioners] ['] Motion to Dismiss which is another Complaint filed in Branch 117 presided by Honorable Judge Leonardo M. Rivera, reveal that both contain similar allegations and causes of action, as if two Complaints were filed one after another, in two (2) courts.

The records also show that the Complaint filed in Branch 117 was dismissed on November 20, 1995 based on the court's finding of forum-shopping and a motion for reconsideration filed by the [respondents], dated November 28, 1995 was denied by the same Court (Branch 117) in its ORDER, dated January 25, 1996.

The present Complaint dismissal of which is being sought is dated February 5, 1996, or barely eleven (11) days after the denial of the said Motion for Reconsideration, and was filed with this Court on February 7, 1996.

Re: ground number one (1) of [respondents]['] Opposition [to the Motion to Dismiss]

A careful examination of the pleadings filed by both parties reveal that the [respondents'] allegations, arguments and evidence in support of this ground are similar to those alleged and argued in the motion for reconsideration, dated November 28, 1995 filed by the [respondents] in Branch 117. As the latter had been denied by Branch 117 on January 25, 1996, with the filing of the present Complaint in this court and then alleging the same ground in its opposition to [petitioners'] motion to dismiss, [respondents] has (sic) thereby placed this court in a position wherein it would have to pass upon a case which was taken cognizant (sic) of and in fact has been dismissed by another court.

There is really forum-shopping here as the present Complaint was filed apparently to obtain a favorable action in this Court.

Moreover, it is improper for this Court to act, much less reverse, the findings of Branch 117, a court of coordinate and concurrent jurisdiction.[10]

The RTC disposed:

WHEREFORE, based on the foregoing considerations, this case is, as it is, hereby DISMISSED.[11]

Aggrieved by the dismissal of their Complaint, respondents assailed the Order of 28 June 1996 of the RTC via a Petition for Certiorari with the Court of Appeals, which reversed the ruling of the court a quo.

According to the appellate court, the dismissal by the RTC, Branch 117, of respondents' Complaint in Civil Case No. 95-1387 did not bar the respondents from refiling their claim before Branch 118 of the same court docketed as Civil Case No. 96-0225,[12] and subject of the instant Petition. The Court of Appeals theorized that the dismissal by the RTC, Branch 117, of Civil Case No. 95-1387 did not operate as an adjudication on the merits. It held that even though hearings were conducted in the said case, the hearings were solely for the purpose of resolving respondents' application therein for a writ of preliminary injunction, which was merely an incident to the main action. Moreover, the appellate court also held that respondents did not commit forum shopping in filing the Complaint in Civil Case No. 96-0225 because the refiling of their action before the RTC, Branch 118, is allowed under the Rules of Court. It held that the grant of a motion to dismiss shall bar the refiling of the action only if the dismissal is based on Section 1 (f), (h), and (i), Rule 16[13] of the Rules of Court, which grounds do not exist in the said Complaint. It further held that the dismissal by the RTC, Branch 117, of the Complaint in Civil Case No. 95-1387 was a dismissal without prejudice; hence, the refiling thereof in a subsequent action was not barred.

The Court of Appeals explained in this wise, viz:

The petitioners could not be accused of forum-shopping because the refiling of their action before the respondent court is allowed under the Rules of Court. Evident it is from the 1997 Rules of Civil Procedure that the grant of a motion to dismiss shall bar the refiling of the action only if the dismissal is on certain specified grounds. This is the clear import of Sections 1 and 5, Rule 16 of the Rules, which respectively provides:

"SECTION 1. Grounds. - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds: x x x (f) That the cause of action is barred by a prior judgment or by the statute of limitations; x x x (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished; (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; x x x" SEC. 5. Effect of dismissal. — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of Section 1 hereof shall bar the refiling of the same action or claim."

Given the fact that the dismissal of Civil Case No. 95-1387 by Branch 117 was not for any of the grounds mentioned in Section 5 of the 1997 Rules of Civil Procedure, We take it that the petitioners cannot be

prevented from prosecuting their claim anew. It matters not that the new rules on procedure took effect only on July 1, 1997, or after the assailed order was promulgated. In this connection, familiar is the rule that procedural laws may be given retroactive effect since there are no vested rights on rules of procedure (*Asset Privatization Trust vs. Court of Appeals*, 229 SCRA 627).

In any event, it must be recalled that even prior to the amendment of the Rules on Civil Procedure, an order dismissing an action is deemed to be without prejudice unless otherwise stated in the order (See Section 2, Rule 17 of the old Rules of Civil Procedure). A perusal of the order of Branch 117 dismissing Civil Case No. 95-1387 contains no indication that the suit was being dismissed with prejudice.[14]

Petitioners' Motion for Reconsideration of the foregoing Decision was denied by the appellate court in the Order of 24 March 1999.

Hence, the instant Petition.

On 9 June 1999, this Court issued a Resolution[15] denying the Petition on the ground that it lacks the affidavit and proof of service of a copy thereof on the Court of Appeals. On 18 August 1999, this Court granted petitioners' Motion for Reconsideration, thus, reinstating the Petition.[16]

The crux of the instant controversy revolves on whether the filing of the Complaint in Civil Case No. 96-0225 with the RTC, Branch 118, constituted forum shopping. Otherwise stated, we are confronted with the question of whether the refiling by the respondents of their Complaint for Specific Performance, Declaration of Nullity of Contracts and Damages with the RTC, Branch 118 (Civil Case No. 96-0225), which Complaint was earlier dismissed by RTC, Branch 117 (Civil Case No. 95-1387), amounted to forum shopping.

Forum shopping[17] is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari.[18] It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[19] The established rule is that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances and must raise identical causes of actions, subject matter, and issues.[20] Forum shopping unnecessarily burdens our courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary and trifles with and mocks our judicial processes, thereby adversely affecting the efficient administration of justice.[21] Forum shopping is contumacious, as well as an act of malpractice that is proscribed and condemned as trifling with the courts and abusive of their processes.[22] A violation of the rule against forum shopping warrants prosecution for contempt of court and constitutes a ground for summary dismissal of the actions involved, without prejudice to appropriate administrative action against the counsel.[23]

Forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other.[24] The elements of forum shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[25]

It is not controverted that the allegations of the respective complaints in both Civil Case No. 95-1387 and Civil Case No. 96-0225 are similarly worded, and are identical in all relevant details, including typographical errors, except for the additional allegations in support of respondents' prayer for the issuance of preliminary injunction in Civil Case No. 95-1387. It is similarly not disputed that both actions involve the same transactions; same essential facts and circumstances; and raise identical causes of actions, subject matter, and issues.

To the mind of the Court of Appeals, the refiling by respondents of their Complaint in Civil Case No. 95-1387 as Civil Case No. 96-0225 does not constitute forum shopping because the grounds relied upon by the RTC, Branch 117, dismissing Civil Case No. 95-1387 do not bar the refiling of the action. To recapitulate, the Court of Appeals ruled that the dismissal of Civil Case No. 95-1387 was not based on Section 1 (f), (h), and (i) of Rule 16[26] of the Rules of Court, which grounds would have prevented the respondents from prosecuting their suit anew.[27] It held that the dismissal was not an adjudication on the merits that would have barred the refiling of the action. Moreover, the appellate court reasoned that the dismissal of Civil Case No. 95-1387 was without prejudice. It held that the Order dismissing Civil Case No. 95-1387 did not state therein that the dismissal was with prejudice; hence, the same should be deemed otherwise. Proceeding therefrom, the appellate court continued to rule that the parties can so proceed to litigate the matter in a subsequent action.[28]

We agree. The dismissal of Civil Case No. 95-1387 was without prejudice. Indeed, the Order dated 20 November 1995, dismissing Civil Case No. 95-1387 was an unqualified dismissal. More significantly, its dismissal was not based on grounds under paragraphs (f), (h), and (i) of Section 1 of Rule 16[29] of the Rules of Court,[30] which dismissal shall bar the refiling of the same action or claim as crystallized in Section 5 of Rule 16 thereof, thus:

SEC. 5. Effect of dismissal. — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of section 1 hereof shall bar the refiling of the same action or claim.

From the foregoing, it is clear that dismissals under paragraphs (f), (h), and (i) of Section 1 of Rule 16 of the Rules of Court constitute *res judicata*, to wit:

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

x x x x

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds.

Res judicata or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.[31] *Res judicata* exists when the following elements are present: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (3) it must be a judgment on the merits; and (d) and there must be, between the first and second actions, identity of parties, subject matter, and cause of action.[32]

The judgment of dismissal in Civil Case No. 95-1387 does not constitute *res judicata* to sufficiently bar the refiling thereof in Civil Case No. 96-0225. As earlier underscored, the dismissal was one without prejudice. Verily, it was not a judgment on the merits. It bears reiterating that a judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point.[33] The dismissal of the case without prejudice indicates the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced.[34]

WHEREFORE, the Petition is DENIED. The Decision dated 6 January 1999 and Resolution dated 24 March 1999 of the Court of Appeals in CA-G.R. SP No. 41978 are hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Callejo, Sr., and Nachura, JJ., concur.

[*] It is manifested in Petitioners' Petition for Review on Certiorari that during the pendency of their appeal to the Court of Appeals, petitioner Isidro Cruz was gunned down in broad daylight, which case remains unresolved. Rollo, p. 9.

[1] Penned by Associate Justice (now Associate Justice of the Supreme Court) Cancio C. Garcia with Associate Justices Omar U. Amin and Teodoro P. Regino, concurring; rollo, pp. 38-48.

[2] Id. at 50.

[3] Penned by Judge Nelson B. Bayot; records, pp. 175-176.

[4] Id. at 1-6.

[5] Id. at 140-142.

[6] Penned by Judge Leonardo M. Rivera; id. at 150-151.

[7] Id. at 153.

[8] Id. at 175-176.

[9] Id. at 176.

[10] Id. at 150-151.

[11] Ibid.

[12] Erroneously referred to by the Court of Appeals in the assailed Decision of 6 January 1999 as Civil Case No. 95-0225.

[13] SECTION 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

x x x x

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds.

[14] Rollo, pp. 45-46.

[15] Id. at 51-52.

[16] Id. at 83.

[17] In *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 303 (1996), this Court traced the history of forum-shopping, thus: [F]orum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid

overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of forum non conveniens was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.

[18] Government Service Insurance System v. Bengson Commercial Buildings, Inc., 426 Phil. 111, 125 (2002).

[19] Id.

[20] Valencia v. Court of Appeals, 331 Phil. 590, 604-605 (1996), citing International Container Terminal Services, Inc. v. Court of Appeals, 319 Phil. 510, 515-516 (1995); Government Service Insurance System v. Sandiganbayan, G.R. No. 83385, 26 November 1990, 191 SCRA 655, 660; Silahis International Hotel, Inc. v. National Labor Relations Commission, G.R. No. 104513, 4 August 1993, 225 SCRA 94, 100.

[21] Progressive Development Corporation, Inc. v. Court of Appeals, 361 Phil. 566, 584 (1999).

[22] Ortigas & Company Limited Partnership v. Velasco, G.R. No. 109645, 25 July 1994, 234 SCRA 455, 500.

[23] Id.

[24] Saura v. Saura, Jr., 372 Phil. 337, 349 (1999).

[25] Government Service Insurance System v. Bengson Commercial Buildings, Inc., supra note 18 at 439-440.

[26] Rollo, pp. 45-46.

[27] Section 5, Rule 16 of the Rules of Court, provides, thus:

SEC. 5. Effect of dismissal. — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of section 1 hereof shall bar the refiling of the same action or claim.

[28] Rollo, pp. 46-47.

[29] Supra note 13.

[30] In People v. Lacson, 448 Phil. 317, 385 (2003), this Court ruled that procedural laws may be applied retroactively, thus:

Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent. The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws. It has been held that "a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, or any other than the existing rules of procedure.

[31] Development Bank of the Philippines v. Court of Appeals, G.R. No. 110203, 9 May 2001, 357 SCRA 626, 632, citing Gosnell v. Webb, 66 CA2d 518, 521, 152 P2d 463 (1944); Poochigian v. Layne, 120 CA2d 757, 261 P2d 738 (1953).

[32] Avisado v. Rumbaua, G.R. No. 137306, 12 March 2001, 354 SCRA 245, 255, citing Arenas v. Court of Appeals, 399 Phil. 372, 385 (2000).

[33] Diaz v. Virata, G.R. No. 162037, 7 August 2006, citing Page-Tenorio v. Tenorio, G.R. No. 138490, 24

November 2004, 443 SCRA 560, 569.

[34] Id.

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