MULTI-REALTY DEVELOPMENT CORPORATION, PETITIONER, VS. THE MAKATI TUSCANY CONDOMINIUM CORPORATION, RESPONDENT.

G.R. NO. 146726. June 16, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before this Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 44696 dismissing the appeal of Multi-Realty Development Corporation on the ground of prescription.

Multi-Realty is a domestic corporation engaged in the real estate business, and the construction and development of condominiums. It developed, among others, the Ritz Towers Condominium, and the former Galeria de Magallanes, both built in the Municipality (now city) of Makati.

In the 1970s, Multi-Realty constructed a 26-storey condominium at the corner of Ayala Avenue and Fonda Street in Makati City, known as the Makati Tuscany Condominium Building (Makati Tuscany, for short). The building was one of the Philippines' first condominium projects, making it necessary for Multi-Realty and the government agencies concerned with the project, to improve and formulate rules and regulations governing the project as construction progressed.

Makati Tuscany consisted of 160 condominium units, with 156 units from the 2[nd] to the 25[th] floors, and 4 penthouse units in the 26[th] floor. Two hundred seventy (270) parking slots were built therein for apportionment among its unit owners. One hundred sixty-four (164) of the parking slots were so allotted, with each unit at the 2nd to the 25[th] floors being allotted one (1) parking slot each, and each penthouse unit with two slots. Eight (8) other parking slots, found on the ground floor of the Makati Tuscany were designated as guest parking slots, while the remaining 98 were to be retained by Multi-Realty for sale to unit owners who would want to have additional slots.

According to Multi-Realty, the intention to allocate only 8 parking slots to the Makati Tuscany's common areas was reflected in its color-coded ground floor plan, upper basement plan and lower basement plan prepared by its architect, C.D. Arguelles and Associates. These plans, which depict common areas as yellow zones and areas reserved for unit owners as red zones, clearly show that, of the 270 parkings slots, 262 were designated red zones, and only 8 first-floor parking slots were designated yellow zones or common areas.

Pursuant to Republic Act No. 4726, otherwise known as the Condominium Act, the Makati Tuscany Condominium Corporation (MATUSCO) was organized and established to manage the condominium units.

In 1975, Multi-Realty executed a Master Deed and Declaration of Restrictions[2] (Master Deed, for short) of the Makati Tuscany. Sections 5 and 7 provide:

> SEC. 5. Accessories to Units. - To be considered as part of each unit and reserved for the exclusive use of its owner are the balconies adjacent thereto and the parking lot or lots which are to be assigned to each unit.

x x x x

SEC. 7. The Common Areas. - The common elements or areas of the Makati Tuscany shall comprise of all the parts of the project other than the units, including without limitation the following:

x x x x

(d) All driveways, playgrounds, garden areas and PARKING AREAS OTHER THAN THOSE ASSIGNED TO EACH UNIT UNDER SEC. 5 ABOVE;[3]

The Master Deed was filed with the Register of Deeds in 1977. Multi-Realty executed a Deed of Transfer in favor of MATUSCO over these common areas. However, the Master Deed and the Deed of Transfer did not reflect or specify the ownership of the 98 parking slots. Nevertheless, Multi-Realty sold 26 of them in 1977 to 1986 to condominium unit buyers who needed additional parking slots. MATUSCO did not object, and certificates of title were later issued by the Register of Deeds in favor of the buyers. MATUSCO issued Certificates of Management covering the condominium units and parking slots which Multi-Realty had sold.

At a meeting of MATUSCO's Board of Directors on March 13, 1979, a resolution was approved, authorizing its President, Jovencio Cinco, to negotiate terms under which MATUSCO would buy 36 of the unallocated parking slots from Multi-Realty. During another meeting of the Board of Directors on June 14, 1979, Cinco informed the Board members of Multi-Realty's proposal to sell all of the unassigned parking lots at a discounted price of P15,000.00 per lot, or some 50% lower than the then prevailing price of P33,000.00 each. The Board agreed to hold in abeyance any decision on the matter to enable all its members to ponder upon the matter.

In the meantime, the fair market value of the unallocated parking slots reached P250,000.00 each, or a total of P18,000,000.00 for the 72 slots.

In September 1989, Multi-Realty, through its President, Henry Sy, who was also a member of the Board of Directors of MATUSCO, requested that two Multi-Realty executives be allowed to park their cars in two of Makati Tuscany's remaining 72 unallocated parking slots. In a letter, through its counsel, MATUSCO denied the request, asserting, for the first time, that the remaining unallocated parking slots were common areas owned by it. In another letter, MATUSCO offered, by way of goodwill gesture, to allow Multi-Realty to use two unallocated parking slots, which offer was rejected by the latter.

On April 26, 1990, Multi-Realty, as plaintiff, filed a complaint, docketed as Civil Case No. 90-1110, against MATUSCO, as defendant, for Damages and/or Reformation of Instrument with prayer for temporary restraining order and/or preliminary injunction. The case was raffled to Branch 59 of the Makati RTC.

Multi-Realty alleged therein that it had retained ownership of the 98 unassigned parking slots. Considering, however, that Makati Tuscany was one of its first condominium projects in the Philippines, this was not specified in Section 7(d) of the Master Deed since the documentation and the terms and conditions therein were all of first impression. It was further alleged that the mistake was discovered for the first time when MATUSCO rejected its request to allow its (Multi-Realty's) executives to park their cars in two of the unassigned parking lots.

In its Answer with counterclaim, MATUSCO alleged that Multi-Realty had no cause of action against it for reformation of their contract. By its own admission, Multi-Realty sold various parking slots to third parties despite its knowledge that the parking areas, other than those mentioned in Sec. 5 of the Master Deed, belonged to MATUSCO. MATUSCO prayed that judgment be rendered in its favor dismissing the complaint; and, on its counterclaim, to order the plaintiff to render an accounting of the proceeds of the sale of the parking slots other than those described in Sec. 5 of the Master Deed; to pay actual damages equivalent to the present market value of the parking areas other than those described in Sec. 5 of the Master Deed, amounting to no less than P250,000.00

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per slot plus reasonable rentals thereon at no less than P400.00 per slot per month from date of sale until payment by plaintiff to defendant of the market value of these parking areas.

After trial, the RTC rendered a decision, the dispositive portion of which reads:

> Premises considered, this case is dismissed. Defendant's counterclaim is, likewise, dismissed, the same not being compulsory and no filing fee having been paid. Plaintiff is, however, ordered to pay defendant attorney's fees in the amount of P50,000.00.
>
> Cost against plaintiff.
>
> SO ORDERED.[4]

The trial court ruled that Multi-Realty failed to prove any ground for the reformation of its agreement with MATUSCO relative to the ownership of the common areas. There is no evidence on record to prove that the defendant acted fraudulently or inequitably to the prejudice of the plaintiff, and the latter was estopped, by deed, from claiming that it owned the common areas. It also held that the defendant was not estopped from assailing plaintiff's ownership over the disputed parking slots.

Multi-Realty appealed the decision to the CA via a petition under Rule 41 of the Rules of Court, contending that:

> THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT AND DISALLOWING THE PLAINTIFF-APPELLANT FROM REFORMING THE MASTER DEED BECAUSE:
>
> I
>
> THERE IS VALID GROUND FOR REFORMATION OF THE MASTER DEED SINCE THE MASTER DEED DID NOT REFLECT THE TRUE INTENTION OF THE PARTIES REGARDING THE OWNERSHIP OF THE EXTRA NINETY-EIGHT PARKING [SLOTS] DUE TO MISTAKE.
>
> II
>
> THE REGISTRATION OF THE MASTER DEED WITH THE REGISTER OF DEEDS DID NOT MAKE PLAINTIFF-APPELLANT GUILTY OF ESTOPPEL BY DEED.
>
> III
>
> THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT-APPELLEE IS NOT ESTOPPED FROM QUESTIONING THE OWNERSHIP OF PLAINTIFF-APPELLANT OVER THE DISPUTED PARKING LOTS.[5]

In support of its appeal, Multi-Realty reiterated its contentions in the trial court, insisting that it had adduced evidence to prove all the requisites for the reformation of Section 7(d) of the Master Deed under Article 1359 of the New Civil Code. It was never its intention to designate the 98 unassigned parking slots as common areas, and, as shown by the evidence on record, this was known to MATUSCO. Under Article 1364 of the New Civil Code, an instrument may be reformed if, due to lack of skill on the part of the drafter, the deed fails to express the true agreement or intention of the parties therein. Since MATUSCO knew that it (Multi-Realty) owned the 98 parking slots when the Master Deed was executed, its registration did not make Multi-Realty guilty of estoppel by deed. In fact, MATUSCO failed to object to the sale of some of the parking slots to third parties. It was also pointed out that Multi-Realty remained in possession thereof.

Multi-Realty further claimed that the trial court erred in not declaring that MATUSCO was estopped from

assailing the ownership over the parking slots, as it not only conformed to the sale of some of the unassigned parking slots but likewise failed to assail the ownership thereon for a period of 11 years. It insisted that the sale of the said parking slots was made in accord with law, morals and public order, and that MATUSCO's claim of ownership of the unassigned parking slots was merely an afterthought.

MATUSCO, for its part, appealed the trial court's dismissal of its counterclaim.

On Multi-Realty's appeal, MATUSCO countered that the 270 parking slots were to be apportioned as follows:

> 1 parking lot for each ordinary unit - 156
>
> 2. parking lots for each of the 4 Penthouse Apartment Units - 8
>
> of the remaining 106 parking lots, 34 parking lots were designated and allocated as part of "common areas" which would be allocated purely for visitors, while the remaining 72 units would become part of the Condominium Corporation's income-earning "common areas"
>
> - 106
> - - - -
> 270[6]
> ====

It was further averred that Multi-Realty, through Henry Sy, executed the Master Deed in July 1975 and the Deed of Transfer in 1977, in which the ownership of the common areas was unconditionally transferred to MATUSCO; Multi-Realty sold 26 of the 34 parking slots in bad faith, which had been allocated purposely for visitors of unit owners, amounting to millions of pesos; the action for reformation has no legal basis because the transfer of the 106 unassigned parking slots which form part of the common areas is contrary to Section 16[7] of the Condominium Act.

MATUSCO further pointed out that the unassigned parking slots could be transferred only by the affirmative votes of all the members of Multi-Realty, and that the Master Deed and the Deed of Transfer were prepared by the latter with the assistance of its renowned lawyers. If there was a mistake in the drafting of the Master Deed in 1975, the deed should have been corrected in 1977 upon the execution of the Deed of Transfer. With the social and economic status of Henry Sy, Multi-Realty's President, it is incredible that the Master Deed and the Deed of Transfer failed to reflect the true agreement of the parties. MATUSCO went on to state that Multi-Realty failed to adduce a preponderance of evidence to prove the essential requirements for reformation of the questioned documents. Even if there was a mistake in drafting the deeds, reformation could not be given due course absent evidence that defendant-appellee acted fraudulently or inequitably.

On its claim of ownership over the unassigned parking slots, MATUSCO averred that it is not estopped to do so because the sales thereof were illegal, and it had no knowledge that Multi-Realty had been selling the same. Having acted fraudulently and illegally, Multi-Realty cannot invoke estoppel against it.

On the RTC decision dismissing its counterclaim, MATUSCO averred that said decision is erroneous, as it had adduced evidence to prove its entitlement to said counterclaim.

In reply, Multi-Realty averred that MATUSCO's counterclaim had already prescribed because it was filed only in 1990, long after the period therefor had elapsed in 1981.

On August 21, 2000, the CA rendered its decision dismissing Multi-Realty's appeal on the ground that its action below had already prescribed. The dispositive portion of the decision reads:

> WHEREFORE, foregoing premises considered, the appeal having no merit in fact and in law, is hereby ORDERED DISMISSED, and the judgment of the trial court is MODIFIED by deleting the award of attorney's fees not having been justified but AFFIRMED as to its Order dismissing both the main complaint of plaintiff-appellant and the counterclaim of defendant-appellant. With costs against both parties.[8]

The appellate court ruled that it was justified in dismissing Multi-Realty's appeal on the ground of prescription as it was clothed with ample authority to review the lower court's rulings even those not assigned as errors on appeal, especially if the consideration of the matter is necessary to arrive at a just decision of the case, and to avoid dispensing "piecemeal justice." The CA cited the rulings of this Court in Servicewide Specialists, Inc. v. Court of Appeals,[9] and Dinio v. Laguesma.[10] Multi-Realty filed a motion for reconsideration of the decision, contending that:

> THIS HONORABLE COURT VIOLATED SECTION 8 OF RULE 51 OF THE RULES OF COURT TO MRDC'S SUBSTANTIAL AND UNFAIR PREJUDICE BY RESOLVING MRDC'S APPEAL ON THE GROUND OF PRESCRIPTION, EVEN THOUGH NEITHER PARTY HAD ASSIGNED OR ARGUED AS AN ERROR THE TRIAL COURT'S FAILURE TO DISMISS THE ACTION FILED BY MRDC BELOW AS PRESCRIBED.
>
> THIS HONORABLE COURT ERRED IN COUNTING THE RUNNING OF THE PRESCRIPTIVE PERIOD FROM THE DATE OF EXECUTION OF THE MASTER DEED IN 1975, BECAUSE UNDERARTICLE 1150 OF THE CIVIL CODE, AND THE SUPREME COURT'S DECISIONS IN TORMON VS. CUTANDA, AND VELUZ VS. VELUZ, MRDC'S PERIOD TO FILE A SUIT FOR REFORMATION ONLY BEGAN RUNNING IN 1989, AFTER DEFENDANT-APPELLANT MAKATI TUSCANY CONDOMINIUM CORPORATION'S REPUDIATION OF THE PARTIES' TRUE AGREEMENT GAVE RISE TO MRDC'S RIGHT OF ACTION.[11]

Multi-Realty further averred that the appellate court misapplied Rule 51, Section 8 of the 1997 Rules of Court as well as the ruling of this Court in the Servicewide Specialists case. It pointed out that, when it filed its Brief, as appellee, Rule 51, Section 7 of the 1964 Rules of Court was still in effect, under which an error which does not affect the jurisdiction over the subject matter will not be considered unless stated in the assignment of error and properly assigned in the Brief, as the court may pass upon plain and clerical errors only. Multi-Realty insisted that the parties did not raise the issue of whether its action had already prescribed when it filed its complaint in their pleadings below and in the respondent's Brief. It claimed that it was deprived of its right to due process when the appellate court denied its appeal based on a ruling of this Court under the 1997 Rules of Civil Procedure. It insisted that the ruling of this Court in Servicewide Specialist, Inc. was promulgated when the 1997 Rules of Civil Procedure was in effect.On January 18, 2001, the CA issued a Resolution denying Multi-Realty's motion for reconsideration. The appellate court cited the ruling of this Court in Rosello-Bentir v. Hon. Leanda,[12] to support its ruling that the action of petitioner had already prescribed when it was filed with the RTC. Multi-Realty received its copy of said Order of denial on January 29, 2001.

Multi-Realty, now petitioner, filed the instant petition for review on certiorari, alleging that:

> THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A MANNER INCONSISTENT WITH LAW, AND DEPARTED WITH UNFAIRLY PREJUDICIAL EFFECT FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS LAID DOWN IN SECTION 8 OF RULE 51 OF THE RULES OF COURT WHEN IT DISMISSED MULTI-REALTY'S "APPEAL" ON THE BASIS OF PRESCRIPTION, EVEN THOUGH NEITHER PARTY RAISED [NOR] DISCUSSED THE TRIAL COURT'S FAILURE TO ENFORCE THE ALLEGEDLY APPLICABLE TIME BAR AS AN ERROR IN THEIR BRIEFS.
>
> THE HONORABLE COURT OF APPEALS DECIDED A MATTER OF SUBSTANCE IN A MANNER

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> PROBABLY NOT IN ACCORD WITH ARTICLE 1150 OF THE CIVIL CODE, WHEN IT DISREGARDED THIS HONORABLE COURT'S RULINGS IN TORMON V. CUTANDA AND VELUZ V. VELUZ, AND RULED THAT THE PRESCRIPTIVE PERIOD APPLICABLE TO AN ACTION FOR REFORMATION BEGINS TO RUN FROM THE DATE THE INSTRUMENT TO BE REFORMED IS EXECUTED, RATHER THAN FROM THE DATE ON WHICH THE TRUE AGREEMENT THE REFORMATION IS MEANT TO EXPRESS IS VIOLATED.
>
> THE HONORABLE COURT OF APPEALS OVERLOOKED RELEVANT FACTS SUSTAINING A DECISION ALLOWING REFORMATION OF THE MASTER DEED WHEN IT FAILED TO REVERSE THE TRIAL COURT'S DECISION AND FIND THAT MATUSCO'S CONSISTENT RECOGNITION OF, AND PARTICIPATION IN, THE SALES OF UNALLOCATED PARKING SLOTS MADE BY MULTI-REALTY, AND ITS EFFORTS TO BUY THE UNALLOCATED PARKING SLOTS FROM MULTI-REALTY, ESTOP IT FROM ASSERTING TITLE TO THE UNALLOCATED PARKING SLOTS.[13]

The Court is to resolve two issues: (1) whether the CA erred in dismissing petitioner's appeal on the ground of prescription; and (2) whether petitioner's action had already prescribed when it was filed in 1990.

On the issue of prescription, petitioner asserts that under Article 1150 in relation to Article 1144 of the New Civil Code, its action for reformation of the Master Deed accrued only in 1989, when respondent, by overt acts, made known its intention not to abide by their true agreement; since the complaint below was filed in 1990, the action was filed within the prescriptive period therefor. Petitioner cites the rulings of this Court in Tormon v. Cutanda,[14] Veluz v. Veluz,[15] and Español v. Chairman, Philippine Veterans Administration[16] to bolster its claim.

In its comment on the petition, respondent avers that, as held by this Court in Rosello-Bentir v. Hon. Leanda,[17] the prescriptive period for the petitioner to file its complaint commenced in 1975, upon the execution of the Master Deed in its favor. Considering that the action was filed only in 1990, the same, by then, had already prescribed.

On the first issue, we sustain petitioner's contention that the CA erred in dismissing its appeal solely on its finding that when petitioner filed its complaint below in 1990, the action had already prescribed. It bears stressing that in respondent's answer to petitioner's complaint, prescription was not alleged as an affirmative defense. Respondent did not raise the issue throughout the proceedings in the RTC. Indeed, the trial court did not base its ruling on the prescription of petitioner's action; neither was this matter assigned by respondent as an error of the RTC in its brief as defendant-appellant in the CA.

Settled is the rule that no questions will be entertained on appeal unless they have been raised below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.[18]

Truly, under Section 7, Rule 51 of the 1964 Rules of Court, no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the Court, at its option, may pass upon plain errors not specified, and clerical errors. Even at that time, the appellate court was clothed with ample authority to review matters even if not assigned as errors in their appeal if it finds that their consideration is necessary in arriving at a just decision of the case.[19] It had ample authority to review and resolve matters not assigned and specified as errors by either of the parties on appeal if it found that the matter was essential and indispensable in order to arrive at a just decision of the case. It has broad discretionary power, in the resolution of a controversy, to take into consideration matters on record unless the

parties fail to submit to the court specific questions for determination. Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the appellate court has authority to include them in its discussion of the controversy as well as to pass upon them. In brief, in those cases wherein questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the issues already framed by the parties, the interests of justice dictate that the court consider and resolve them.[20]

When the appeals of the petitioner and that of the respondent were submitted to the CA for decision, the 1997 Rules of Civil Procedure was already in effect. Section 8, Rule 51 of said Rules, reads:

> SEC. 8. Questions that may be decided. - No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

This provision was taken from the former rule with the addition of errors affecting the validity of the judgment or closely related to or dependent on an assigned error.[21] The authority of the appellate court to resolve issues not raised in the briefs of the parties is even broader.

Nevertheless, given the factual backdrop of the case, it was inappropriate for the CA, motu proprio, to delve into and resolve the issue of whether petitioner's action had already prescribed. The appellate court should have proceeded to resolve petitioner's appeal on its merits instead of dismissing the same on a ground not raised by the parties in the RTC and even in their pleadings in the CA.

Even if we sustain the ruling of the CA that it acted in accordance with the Rules of Court in considering prescription in denying petitioner's appeal, we find and so rule that it erred in holding that petitioner's action had already prescribed when it was filed in the RTC on April 26, 1990.

Prescription is rightly regarded as a statute of repose whose object is to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses. The essence of the statute of limitations is to prevent fraudulent claims arising from unwarranted length of time and not to defeat actions asserted on the honest belief that they were sufficiently submitted for judicial determination.[22] Our laws do not favor property rights hanging in the air, uncertain, over a long span of time.[23]

Article 1144 of the New Civil Code provides that an action upon a written contract must be brought within ten (10) years from the time the right of action accrues:

> Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
> (2) Upon an obligation created by law;
> (3) Upon a judgment.

In relation thereto, Article 1150 of the New Civil Code provides that the time for prescription of all actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought. It is the legal possibility of bringing the action that determines the starting point for the computation of the period of prescription.[24]

The term "right of action" is the right to commence and maintain an action. In the law of pleadings, right of action is distinguished from a cause of action in that the former is a remedial right belonging to some persons while the

latter is a formal statement of the operational facts that give rise to such remedial right. The former is a matter of right and depends on the substantive law while the latter is a matter of statute and is governed by the law of procedure. The right of action springs from the cause of action, but does not accrue until all the facts which constitute the cause of action have occurred.[25]

A cause of action must always consist of two elements: (1) the plaintiff's primary right and the defendant's corresponding primary duty, whatever may be the subject to which they relate - person, character, property or contract; and (2) the delict or wrongful act or omission of the defendant, by which the primary right and duty have been violated.[26]

To determine when all the facts which constitute a cause of action for reformation of an instrument may be brought and when the right of the petitioner to file such action accrues, the second paragraph of Section 1, Rule 63, must be considered because an action for the reformation of an instrument may be brought under said Rule:

> SECTION 1. Who may file petition. - Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.
>
> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule (emphasis supplied).

Such a petition is a special civil action determinative of the rights of the parties to the case. It is permitted on the theory that courts should be allowed to act, not only when harm is actually done and rights jeopardized by physical wrongs or physical attack upon existing legal relations, but also when challenge, refusal, dispute or denial thereof is made amounting to a live controversy. The uncertainty and insecurity which may thereby be avoided may hamper or disturb the freedom of the parties to transact business or to make improvements on their property rights. A situation is thus created when a judicial declaration may serve to prevent a dispute from ripening into violence or destruction.[27]

The concept and meaning of the term cause of action in proceedings for declaratory relief, vis-à-vis an ordinary civil action, is broadened. It is not, as in ordinary civil action, the wrong or delict by which the plaintiff's rights are violated, but it is extended to a mere denial, refusal or challenge raising at least an uncertainty or insecurity which is injurious to plaintiff's rights.[28]

For a petition for declaratory relief to prosper, the following conditions sine qua non must concur: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.[29]

To controvert is to dispute; to deny, to oppose or contest; to take issue on.[30] The controversy must be definite and concrete, touching on the legal relations of the parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[31]

The fact that the plaintiff's desires are thwarted by its own doubts, or by the fears of others, does not confer a cause of action. No defendant has wronged the plaintiff or has threatened to do so.[32] However, the doubt becomes a justiciable controversy when it is translated into a claim of right which is actually contested.[33] As explained by this Court, a dispute between the parties is justiciable when there is an active antagonistic assertion

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of a legal right on one side and a denial thereof on the other, concerning a real, not merely a theoretical question or issue.[34]

In sum, one has a right of action to file a complaint/petition for reformation of an instrument when his legal right is denied, challenged or refused by another; or when there is an antagonistic assertion of his legal right and the denial thereof by another concerning a real question or issue; when there is a real, definitive and substantive controversy between the parties touching on their legal relations having adverse legal interests. This may occur shortly after the execution of the instrument or much later.[35]

A party to an instrument is under no obligation to seek a reformation of an instrument while he is unaware that any opposition will be made to carry out the actual agreement.[36] The statute of limitations does not begin to run against an equitable cause of action for the reformation of an instrument because of mistake until the mistake has been discovered or ought to have been discovered.[37] The mere recording of a deed does not charge the grantor with constructive notice of a mistake therein, but is to be considered with other facts and circumstances in determining whether the grantor be charged with notice actual or constructive.[38]

In State ex rel. Pierce County v. King County,[39] the appellate court ruled that:

> In equitable actions for reformation on the ground of mistake the rule on the question of when the period of limitation or laches commences to run is as stated by this Court in State v. Lorenz, 22 Wash. 289, 60 P. 644, 647:
>
> * * * that the statute did not begin to run against the right of appellant to reform the deed [because of a mistake therein] until the assertion on the part of respondents of their adverse claim.
>
> In Chebalgoity v. Branum, 16 Wash.2d 251, 133 P.2d 288, 290, we said:'Nor is his right to maintain it [an action for reformation grounded on mistake] impaired by lapse of time, for the bar of the statue of limitations does not begin to run until the assertion of an adverse claim against the party seeking reformation.'
>
> The rule is also stated in 53 C.J. 1003, reformation of instruments, as follows:
>
> '[§ 155] C. Time for Bringing Action. An action to reform an instrument may be brought as soon as the cause of action accrues. * * * On the other hand, a party to an instrument is under no obligation to seek its correction before his cause of action is finally vested or while he is unaware that any opposition will be made in carrying out the actual agreement, where for a long time the rights and duties of the parties are the same under the writing and under the terms which it is alleged were intended, and the failure to take any action toward reformation until his right vests or opposition is manifest does not prejudice his suit.'[40]

In this case, before petitioner became aware of respondent's denial of its right under their true contract, petitioner could not be expected to file an action for the reformation of the Master Deed. As Justice Jose BL Reyes, ratiocinated in Tormon v. Cutanda:[41]

> It follows that appellant's cause of action arose only when the appellees made known their intention, by overt acts, not to abide by the true agreement; and the allegations of the complaint establish that this happened when the appellees executed the affidavit of consolidation of the title allegedly acquired by appellees under the fictitious pacto de retro sale. It was then, and only then, that the appellant's cause of action arose to enforce the true contract and have the apparent one reformed or disregarded, and the period of extinctive prescription began to run against her. Since the consolidation affidavit was allegedly made only in September 1960, and the complaint was filed in Court the following November 1960, just two months afterward, the action of appellant had not prescribed.[42]

The Court's ruling in the Tormon case was reiterated in Veluz v. Veluz.[43]

In the more recent case of Naga Telephone Co., Inc. v. Court of Appeals,[44] the Court made the following declaration:

> Article 1144 of the New Civil Code provides, inter alia, that an action upon a written contract must be brought within ten (10) years from the time the right of action accrues. Clearly, the ten (10) years period is to be reckoned from the time the right of action accrues which is not necessarily the date of execution of the contract. As correctly ruled by respondent court, private respondent's right of action arose "sometime during the latter part of 1982 or in 1983 when according to Atty. Luis General, Jr. x x x, he was asked by (private respondent's) Board of Directors to study said contract as it already appeared disadvantageous to (private respondent) (p. 31, tsn, May 8, 1989). Private respondent's cause of action to ask for reformation of said contract should thus be considered to have arisen only in 1982 or 1983, and from 1982 to January 2, 1989 when the complaint in this case was filed, ten (10) years had not yet elapsed.[45]

This ruling was reiterated in Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc., [46] where the Court declared that the cause of action of respondent therein arose upon its discovery of the short deliveries with certainty, since prior thereto, it had no indication that it was not getting what it was paying for. The Court declared that before then, there was yet no issue to speak of, and as such, respondent could not have brought an action against petitioner. It was stressed that "it was only after the discovery of the short deliveries that respondent got into position to bring an action for specific performance." Thus, the Court declared that the action was brought within the prescriptive period.[47]

In the present case, petitioner executed the Master Deed in 1975. However, petitioner had no doubt about its ownership of the unassigned parking lots, and even sold some of them. Respondent did not even object to these sales, and even offered to buy some of the parking slots. Respondent assailed petitioner's ownership only in 1989 and claimed ownership of the unassigned parking slots, and it was then that petitioner discovered the error in the Master Deed; the dispute over the ownership of the parking slots thereafter ensued. It was only then that petitioner's cause of action for a reformation of the Master Deed accrued. Since petitioner filed its complaint in 1990, the prescriptive period had not yet elapsed.

The CA erred in relying on the ruling of this Court in Rosello-Bentir v. Hon. Leanda.[48] In that case, the Leyte Gulf Traders, Inc. leased a parcel of land owned by Yolando Rosello-Bentir. The lease agreement was entered into on May 5, 1968 and was for a period of 20 years. The parties therein agreed, inter alia, that:

> "4. IMPROVEMENT. The lessee shall have the right to erect on the leased premises any building or structure that it may desire without the consent or approval of the Lessor x x x provided that any improvements existing at the termination of the lease shall remain as the property of the Lessor without right to reimbursement to the Lessee of the cost or value thereof."[49]

On May 5, 1989, the lessor Rosello-Bentir sold the property and the corporation questioned the sale, alleging that they had a verbal agreement that the lessor has the right to equal the offers of prospective buyers of the property. It insisted, however, that the said agreement was inadvertently omitted in the contract. On May 15, 1992, the corporation filed a complaint for reformation of instrument, specific performance, annulment of conditional sale and damages with a prayer for a writ of preliminary injunction, alleging that the contract of lease failed to reflect the true agreement of the parties.

In his answer to the complaint, the lessor alleged that the corporation was guilty of laches for not bringing the case for reformation of the lease contract within the prescriptive period of 10 years from its execution. On December 15, 1995, the trial court issued an Order dismissing the complaint on the ground that the action had already prescribed. Plaintiff filed a motion for the reconsideration of the Order and, on May 10, 1996, the trial court granted the motion and set aside its Order, this time, declaring that its Order dated December 15, 1995

dismissing the complaint was "premature and precipitate" and denied the corporation its right to due process. The trial court declared that, aside from plaintiff's cause of action for reformation of lease contract, plaintiff had other causes of action such as specific performance, annulment of conditional sale and damages, which must first be resolved before the trial on the merits of its case.

On appeal to the CA, the lessor alleged that the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction in setting aside the December 15, 1995 Order of the RTC. For its part, the CA rendered judgment dismissing the petition for certiorari on its finding that the complaint had not yet prescribed when it was filed in the court below. The CA declared that the prescriptive period for the action for reformation of the lease contract should be reckoned not from the execution of the contract of lease in 1968, but from the date of the four-year extension of the lease contract after it expired in 1988. According to the CA, the extended period of the lease was an "implied new lease" within the contemplation of Article 1670 of the New Civil Code under which provision, the other terms of the original contract were deemed revived in the implied new lease.

However, we reversed this CA decision and declared that the action for reformation of the lease contract was inappropriate because petitioner had already breached the deed.[50] Even supposing that the four-year extended lease could be considered as an implied new lease under Article 1670 of the New Civil Code, the "other terms" contemplated therein were only those terms which are germane to the lessee's right of continued enjoyment of the leased property. We concluded that the prescriptive period of 10 years, as provided for in Article 1144 of the Civil Code, applies by operation of law and not by the will of the parties, and that, therefore, the right of action for reformation accrues from the date of the execution of the contract of lease in 1968.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 44696 is SET ASIDE. The Court of Appeals is directed to resolve petitioner's appeal with reasonable dispatch. No costs.

ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Ramon Mabutas, Jr. (retired) and Martin S. Villarama, Jr., concurring; rollo, pp. 93-100.

[2] Records, pp. 55-61.

[3] Rollo, p. 174.

[4] Records, p. 544.

[5] CA rollo, pp. 52-53.

[6] Rollo, p. 174.

[7] Section 16. A condominium corporation shall not, during its existence, sell, exchange, lease, or otherwise dispose of the common areas owned or held by or in the condominium project unless authorized by the affirmative vote of a simple majority of the registered owners: Provided, That prior notifications to all registered owners are done: and Provided, further, That the condominium corporation may expand or integrate the project with another upon the affirmative vote of a simple majority of the registered owners, subject only to the final approval of the Housing and Land Use Regulatory Board.

[8] Rollo, p. 17.

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[9] 327 Phil. 431, 443 (1996).

[10] 339 Phil. 309 (1997).

[11] Rollo, p. 198.

[12] 386 Phil. 802, 812 (2000).

[13] Rollo, pp. 64-65.

[14] 119 Phil. 84 (1963).

[15] 133 Phil 459 (1968).

[16] G.R. No. L-44616, June 29, 1985, 137 SCRA 314 (1985).

[17] Supra note 12.

[18] Mendoza v. Court of Appeals, G.R. No. 116216, June 20, 1997, 274 SCRA 527, 538-539.

[19] Korean Air Lines, Co. Ltd. v. Court of Appeals, G.R. No. 114061, August 3, 1994, 234 SCRA 717, 725, citing Vda. de Javellana v. CA, 123 SCRA 799 (1983).

[20] Insular Life Assurance Co. Ltd. Employees Association-NATU v. InsularLife Assurance Co., Ltd., No. L-25291, March 10, 1977, 76 SCRA 50, 61-62.

[21] J.Y. Feria, 1997 RULES OF CIVIL PROCEDURE, ANNOTATED (1997 ed.,) 209.

[22] Yuchengco v. Republic of the Philippines, 388 Phil. 1039, 1061 (2000).

[23] Ochagabia v. Court of Appeals, G.R. No. 125590, March 11, 1999, 304 SCRA 587, 593.

[24] Tolentino v. Court of Appeals, L-41427, June 10, 1988, 162 SCRA 66, 72.

[25] De Guzman, Jr. v. Court of Appeals, G.R. Nos. 92029-30, December 20, 1990, 192 SCRA 507, 508.

[26] Consolidated Dairy Products, Co. v. Court of Appeals, G.R. No. 100401, August 24, 1992, 212 SCRA 810, 818.

[27] Moran, COMMENTS ON THE RULES OF COURT, VOL 3. (1970 ed.), 149.

[28] Id. at 144.

[29] Caltex (Philippines), Inc. v. Palomar, 124 Phil. 763, 770 (1966).

[30] In Re Pittsburgh's City Charter, 297 Pa. 502, 147 A. 525 (1929).

[31] Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 57 S.Ct. 461 (1937).

[32] Willing v. Chicago Auditorium Association, 277 U.S. 274, 48 S.Ct. 507 (1928).

[33] Tolentino v. Board of Accountancy, 90 Phil. 83, 88 (1951).

[34] Caltex (Philippines), Inc. v. Palomar, supra note 29, at 771-772.

[35] See Banco Filipino Savings and Mortgage Bank v. Court of Appeals, 388 Phil. 27 (2000).

[36] Stewart v. Warren, 153 S.W. 2d 545, 202 Ark. 873 (1941).

[37] See Johnson v. U.S., 340 F.3d 1219 (2003).

[38] American Mining Co. v. Basin & Bay State Mining Co., 39 Mont. 476, 104 P. 525 (1909).

[39] 29 Wash. 2d 37, 185 P.2d 134 (1947).

[40] 29 Wash.2d 37, 44, 185 P.2d 134, 137.

[41] Supra note 14.

[42] Id. at 87-88.

[43] Supra note 15.

[44] G.R. No. 107112, February 24, 1994, 230 SCRA 351.

[45] Id. at 369.

[46] Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc., G.R. No. 159831, October 14, 2005, 473 SCRA 151.

[47] Id. at 171.

[48] Supra note 12.

[49] Id. at 809.

[50] Id. at 813.

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