

**DAVAO LIGHT & POWER CO., INC., PETITIONER, VS. HON. JUDGE OF THE REGIONAL TRIAL COURT DAVAO CITY, BRANCH 8, ATTY. SERAFIN S. OSABEL, NEOCEDA NOVAL-OSABEL, MARIE JOHANNA OSABEL-G...**

*G.R. NO. 147058. March 10, 2006*

Ponente: AUSTRIA-MARTINEZ, J.

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**AUSTRIA-MARTINEZ, J.:**

Petitioner, an electric utility with franchise to distribute electricity in Davao City and other areas, assails in the present petition for review under Rule 45 of the Rules of Court the Decision dated October 6, 2000 and the Resolution dated February 6, 2001 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 50234.[1]

Petitioner and private respondents are the contending parties in two separate civil cases before the lower courts. Civil Case No. 3452-F-96 is for Sum of Money, Damages and Attorney's Fees pending before the Municipal Trial Court in Cities (MTCC) of Davao City, Branch 6, where petitioner is the plaintiff while private respondent Atty. Serafin Osabel (Atty. Osabel) and Alfredo Rubin (Rubin) are the defendants. On the other hand, Civil Case No. 25,086-97 is for Damages and Attorney's Fees with Prayer for a Writ of Preliminary Mandatory Injunction filed before the Regional Trial Court (RTC) of Davao City, Branch 8, with private respondents as plaintiffs and petitioner as defendant.

In Civil Case No. 3452-F-96, petitioner alleged in its Amended Complaint that: it entered into an electric service contract with Rubin; despite notice, Rubin failed to pay his electric bills from September 1990 to May 1993 until it amounted to P35,154.17, prompting petitioner to cut off electrical service on October 14, 1993; petitioner discovered that during said period, Rubin's electricity service was extended beyond his property line to a certain Ronald Donguila, who, in turn, sold his property to Atty. Osabel; petitioner also discovered that Atty. Osabel was using the electrical service of a certain Maria Mercedes Villarosa (Villarosa); petitioner tried to collect from Atty. Osabel but the latter refused and instead, informed petitioner that he is consigning the payment of his current consumption to the court; petitioner tried to collect the amount consigned to the court but was informed by the Clerk of Court that he needed an order to do so; petitioner gave Atty. Osabel an opportunity to settle his obligation under his present consumption but the latter ignored petitioner's communications; because of private respondents' failure to pay the arrears, petitioner disconnected the service on February 6, 1997, and in view of the termination of the contract, removed the meter from the premises.[2] Thus, petitioner prayed for the payment of the sums sought to be collected, damages and attorney's fees.[3]

Meanwhile, in Civil Case No. 25,086-97, Atty. Osabel, together with his co-private respondents wife and children, presented three causes of action for damages due to petitioner's (1) failure to give notices of disconnection in two instances between February 1996 and December 1996; (2) disconnection of private respondents' electric services on February 6, 1997; and (3) removal of the electric meter by petitioner in full view of their neighbors and the public on February 21, 1997.[4]

Private respondents alleged in their complaint that: in 1994 and with petitioner's knowledge, they leased a residential house owned by Villarosa including the use of Electric Meter No. 86817 under Account No. 091-13848; some time in December 1995, they received from petitioner a letter demanding payment of P18,900.17 for the electrical consumption made under the name of Rubin; Atty. Osabel replied and informed petitioner that his obligation under Account No. 091-13848 has been settled, and the demand for payment for the consumption made in Rubin's name is illegal for which he cannot be held liable, and that he is tendering payment in the amount of P189.41 as full payment for his March 1996 account; petitioner wrote back to Atty. Osabel, informing him that the unpaid account in Rubin's name was transferred to his name under Account No. 091-13848, and that a conference was scheduled on May 22, 1996 so that the matter may be settled; Atty. Osabel declined to attend the conference, reiterated his objection to the transfer of Rubin's account to his name, and requested for a statement of account for May 1996 so that he could deposit the amount with the Office of the Clerk of Court of the MTCC; several communications were exchanged between petitioner and Atty. Osabel until the electrical service to the Osabels was twice disconnected, in February and December 1996, without notice and warning; Atty. Osabel made deposits with the MTCC Office of the Clerk of Court for their account due from March 1996 to December 1996; on January 1997, petitioner wrote Villarosa claiming the amount of P9,633.32 as outstanding balance as of January 1997, without prejudice to its recovery of the amount of P18,900.17 against Atty. Osabel; Atty. Osabel then made another deposit of P1,008.44 with the MTCC Office of the Clerk of Court for their January 1997 consumption, notifying petitioner of the same in a Notice of Consignation dated February 3, 1997; petitioner refused to acknowledge the consignation and decided to terminate its service contract on February 6, 1997, and removed its electric meter on February 21, 1997.[5] In each of the three causes of action, the Osabels prayed for the award of moral, nominal and exemplary damages as well as attorney's fees and litigation expenses in their favor. They also prayed for the deletion of the amount of P9,633.32 from Account No. 091-13848.[6]

Petitioner filed an Amended Motion to Dismiss Civil Case No. 25,086-97 on grounds of lack of jurisdiction, lack of cause of action, and that a valid consignation needs a judicial action in the MTC for the complaint to prosper.[7] With regard to lack of jurisdiction, petitioner argued that the claim for moral damages is only for P80,000.00, and as such, it is below the jurisdictional amount cognizable by the RTC. Petitioner also argued that since private respondents' other causes of action pertain to their consignation of P7,912.62 before the MTCC, and the damages prayed for are mere incidents to it, then the RTC has no jurisdiction over the case. On the issue of the lack of cause of action, petitioner contended that private respondents, who alleged that the case is one for damages and not consignation, failed to allege in their complaint that there was a valid consignation made in order for them to validly claim the damages sought. Petitioner also contended that private respondents are not even the real-party-in-interest inasmuch as they are mere lessees of Villarosa and the contract of service was with the latter. Finally, petitioner claimed that the consignation made with the clerk of court is ineffective in the absence of a complaint or case made in court.[8]

Private respondents filed their opposition to the amended motion to dismiss, refuting petitioner's arguments. Respondents essentially claimed that the case before the trial court is for damages and does not depend on the issue of consignation.[9]

On June 19, 1997, the RTC issued its Order denying the motion to dismiss. The RTC ruled thus:

In this regard, this Court notes that the instant claim is for the recovery of damages for the alleged and oppressive act of defendant in cutting of power in plaintiffs' abode which this Court finds to be incapable of pecuniary estimation for as stated in *Raymundo vs. Court of Appeals, et al.*, 213 SCRA 457, "(I)n determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily

for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether it is in the municipal court [now municipal trial courts] or in the courts of first instance [now regional trial courts] would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such action as cases where the subject of litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance [now regional trial courts]."

Anent the second, defendant asserts that the complaint fails to state a cause of action upon plaintiffs' failure to allege a valid consignment, which, it stresses, is a matter upon which their claim is hinged.

This Court appreciates the logic of defendant's arguments. The argument, however, assumes that plaintiffs' claim depend on a valid consignment or that the consignment made by plaintiffs was ineffective. Suffice it to state that these are matters better ventilated at the trial on the merits.[10]

Petitioner filed a motion for reconsideration of the RTC's denial, which was denied by the RTC in its Order dated November 10, 1998.[11]

Petitioner then brought the RTC orders to the CA via petition for certiorari and prohibition with preliminary injunction, but the CA denied this in the assailed Decision dated October 6, 2000. The decretal portion of the Decision reads:

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit; and the assailed Orders of the respondent Judge in Civil Case No. 25,086-97 are AFFIRMED en toto. The petitioner is hereby ordered to file its Answer before the court a quo.

SO ORDERED.[12]

The CA found that the RTC has jurisdiction over the case inasmuch as the action before the RTC seeks to compel petitioner to accept payment of the consigned amounts, and therefore one for specific performance, which is incapable of pecuniary estimation.[13]

Petitioner sought reconsideration of the CA's decision but this was denied by the CA in the assailed Resolution dated February 6, 2001.[14]

Hence, the present petition, with petitioners setting forth basically the same arguments it raised before the RTC and the CA.[15] According to petitioner, based on the allegations and the relief prayed for in the complaint, the action before the RTC is a consignment case or an action to compel the creditor to accept payment; and following the ruling in *Ascue v. Court of Appeals*, 196 SCRA 804, the amount consigned is below the jurisdiction of the RTC. Petitioner also argues that the case before the RTC is not a proper consignment case as it is not lodged with the proper forum where the consignment or deposit is at the disposal of judicial authority, the deposits having been made with the MTCC Office of the Clerk of Court. Lastly, petitioner contends that since it is not the proper case, then it is dismissible for lack of jurisdiction, lack of or failure to state a cause of action and *litis pendentia*.

It has long been settled that an order denying a motion to dismiss is an interlocutory order. It neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits, and as such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari.[16] In order to justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[17] In this case, the Court finds none.

Both the RTC and the CA found that Civil Case No. 25,086-97 is within the RTC's jurisdiction as the same is

incapable of pecuniary estimation. But that is the only aspect where the two courts shared the same view. The RTC and the CA differed in characterizing respondents' case. It was the opinion of the RTC that Civil Case No. 25,086-97 is one for damages, while the appellate court found that it was for specific performance. Given this divergence of opinion, it now devolves upon the Court to ascertain the nature of the case before the RTC and ultimately determine whether the RTC has jurisdiction over the same.

The nature of an action is determined by the material averments in the complaint and the character of the relief sought.[18] In this case, the complaint filed in Civil Case No. 25,086-97 sufficiently established a case for DAMAGES, and not specific performance. Neither is it an action for consignment. This is evident from the reading of the allegations in the complaint and the reliefs prayed for. The complaint principally sought an award of moral, nominal and exemplary damages, as well as attorney's fees and litigation expenses, for the alleged damages suffered by respondents by reason of petitioner's disconnection of their electrical service. The allegations regarding the consignment with the court of the amounts due to petitioner are mere factual premises from which respondents are basing their theory that petitioner's disconnection of the electrical service and removal of the electric meter was unjustified. Also, the relief sought by respondents for the RTC to order petitioner to delete the amount of P9,633.32 from their account is merely incidental to their claim for damages. It is not the main cause of their claim.

Given that Civil Case No. 25,086-97 is an action for damages, the next question to be resolved is whether the RTC has jurisdiction over the case.

Republic Act No. 7691, which took effect on April 15, 1994, provides that where the amount of the demand in civil cases exceeds P100,000.00, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the exclusive jurisdiction thereof is lodged with the RTC.[19] Where the amount of the demand in the complaint does not exceed P100,000.00, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the exclusive jurisdiction over the same is vested in the Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court.[20] On March 20, 1999, by virtue of Administrative Circular No. 21-99, the jurisdictional amount was increased to P200,000.00.

Guidelines in the implementation of R.A. No. 7691 were laid out in Administrative Circular No. 09-94 dated June 14, 1994. Particularly, with regard to damages, paragraph 2 provides:

2. The exclusion of the term "damages of whatever kind" in determining the jurisdictional amount under Section 19 (8) and Section 33 (1) of B.P. Blg. 129, as amended by R.A. No. 7691, applies to cases where the damages are merely incidental to or a consequence of the main cause of action. However, in cases where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court. (Emphasis supplied)

Jurisdiction over the subject matter is determined by the allegations in the complaint, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein.[21] Jurisdiction should not be affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant.[22]

The complaint in Civil Case No. 25,086-97 was filed on March 3,

1997,[23]hence, R.A. No. 7691 and its implementing guidelines apply. In their prayer, respondents sought, among others, the following awards:

x x x x

C. On the First Cause of Action: To condemn defendant to pay plaintiffs the sum of P80,000.00 moral

damages, P20,000.00 nominal damages and P20,000.00 exemplary or corrective damages with interest at the legal rate from the date of filing of the complaint until fully paid.

D. On the Second Cause of Action: To condemn the defendant to pay damages to the following plaintiffs, viz.:

(1) To plaintiff Serafin S. Osabel:

P200,000.00 — moral damages

20,000.00 — nominal damages

20,000.00 — temperate damages

20,000.00 — exemplary or corrective damages

with interest at the legal rate from the date of filing of the complaint until fully paid.

(2) To plaintiffs Neoceda Osabel, Marie Johanna Osabel-Garcia, Victoria Luz-Dacuycuy, Anna Christia Osabel and Serafin Osabel, Jr.

P150,000.00 — moral damages

25,000.00 — nominal damages

25,000.00 — exemplary or corrective damages

with interest at the legal rate from the date of filing of the complaint until fully paid.

(3) P6,163.13 actual or compensatory damages with interest at the legal rate from the date of the filing of the complaint until fully paid.

E. On the Third Cause of Action: To condemn the defendant to pay plaintiffs the sum of P140,000.00 in damages itemized as follows:

P100,000.00 — moral damages

20,000.00 — nominal damages

20,000.00 — exemplary or corrective damages[24]

It is clear from the foregoing that respondents' main action is for damages. Hence, all these claims must be included in determining the jurisdictional amount, and obviously, it falls within the jurisdiction of the RTC.

Petitioner's argument of lack of cause of action likewise cannot stand.

Cause of action is defined as the act or omission by which a party violates a right of another.[25] A complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Assuming the facts that are alleged to be true, the court should be able to render a valid judgment in accordance with the prayer in the complaint.[26]

The rule is that in a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the plaintiff's complaint. This hypothetical admission extends to the relevant and material facts pleaded in, and the inferences fairly deducible from, the complaint. Hence, to determine whether the sufficiency of the facts alleged in the complaint constitutes a cause of action, the test is as follows: admitting the truth of the facts alleged, can the court render a valid judgment in accordance with the prayer?[27]

A perusal of the complaint discloses sufficient allegations of a legal right or interest enjoyed by respondents, which was allegedly violated by petitioner, thus causing damages and injury to the former. The issue of valid consignment raised by petitioner is a matter of defense that is best left to be established by proof and determined during the trial on the merits of the case, as was correctly ruled by the RTC.

Lastly, with regard to the ground of *litis pendentia* as a ground for dismissal of the case, suffice it to say that petitioner never raised this issue before the RTC or the CA. It is being alleged for the first time only before the Court. The rule is that questions not raised in the lower courts cannot be raised for the first time on appeal.[28] Consequently, the Court will not dwell on said issue.

WHEREFORE, the petition is DENIED. The Regional Trial Court (RTC) of Davao City, Branch 8, is ORDERED to proceed with Civil Case No. 25,086-97 with dispatch.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Cancio C. Garcia (now a Member of this Court) and Romeo A. Brawner, concurring.

[2] CA rollo, pp. 55-61.

[3] Id. at 61-62.

[4] Id. at 31-52.

[5] Id. at 34-49.

[6] Id. at 50-51.

[7] Id. at 69.

[8] Id. at 69-74.

[9] Id. at 76-81.

[10] Id. at 25-26-a.

[11] Id. at 28-29.

[12] Id. at 159.

[13] Id. at 157-158.

[14] Id. at 198.

[15] Rollo, pp. 32-42.

[16] *Lu Ym v. Nabua*, G.R. No. 161309, February 23, 2005, 452 SCRA 298, 305-306.

[17] The rule admits of other exceptions, such as when an appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case. (*Balo v. Court of Appeals*, G.R. No. 129704, September 30, 2005, citing *Bank of America NT&SA v. Court of Appeals*, 400 SCRA 156, 166).

[18] *Jimenez, Jr. v. Jordana*, G.R. No. 152526, November 25, 2004, 444 SCRA 250, 259.

[19] Section 1.

[20] Section 3.

[21] Mangaliag v. Pastoral, G.R. No. 143951, October 25, 2005.

[22] Sta. Clara Homeowners' Association v. Gaston, 425 Phil. 221, 237-238 (2002).

[23] CA rollo, p. 31.

[24] Id. at 51.

[25] Supra., Note No. 18, Jimenez case.

[26] Regino v. Pangasinan Colleges of Science and Technology, G.R. No. 156109, November 18, 2004, 443 SCRA 56, 69.

[27] Supra., Jimenez case.

[28] Arcelona v. Court of Appeals, 345 Phil. 250, 284-285 (1997).

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