

SPS. RAYMUNDO & MARILYN CALO, PETITIONERS, VS. SPOUSES REYNALDO & LYDIA TAN AND THE DEVELOPMENT BANK OF THE PHILIPPINES, (BUTUAN BRANCH), RESPONDENTS.*G.R. No. 151266. November 29, 2005*

Ponente: TINGA, J.

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On 9 September 1986, respondent Lydia Tan entered into a Joint Venture Agreement[1] with petitioner Raymundo Calo, and four other persons regarding a small scale mining business. It was agreed that respondent Lydia Tan would act as the financier and procure all the equipment needed for the business while Raymundo Calo would be an industrial partner, managing and overseeing the activities of the venture.

Sometime in December 1986, petitioner Raymundo Calo applied for a loan of around P500,000.00 with the Development Bank of the Philippines (DBP), Butuan Branch, using as collateral several pieces of equipment allegedly purchased by respondent Lydia Tan for the mining business, which properties Raymundo Calo represented as his own. This was supposedly without the knowledge of Lydia Tan. The loan application was granted and a chattel mortgage constituted over the mining equipment. Raymundo Calo later failed to pay the obligation and the chattel mortgage was subsequently foreclosed. The mining equipment was sold at public auction with DBP as the highest bidder.

On 9 November 1987, respondent spouses Reynaldo and Lydia Tan filed before the Regional Trial Court (RTC) of Cagayan de Oro City a complaint for replevin and damages with writ of preliminary injunction/restraining order[2] against petitioners Raymundo and Marilyn Calo, DBP and the Provincial Sheriff of Agusan del Norte, as defendants. The case was docketed as Civil Case No. 11185.

Petitioners and DBP filed on 26 May 1988 a Joint Motion to Dismiss[3] on the basis of Section 1(c), Rule 16 of the Revised Rules of Court, claiming that "there is another action pending between the same parties for the same cause in the [RTC] of Agusan del Norte and Butuan City in Branch 1 thereof." [4] Petitioners were referring to a separate civil case for injunction filed by respondent spouses against petitioners, DBP, and the Provincial Sheriff of Agusan del Norte, docketed as Special Civil Case No. 521. [5] The case for injunction was filed to enjoin the Sheriff and DBP from proceeding with the foreclosure sale of the mortgaged properties scheduled on 12 October 1987. The case for injunction and that for replevin and damages involved the same transaction and properties. The RTC of Agusan del Norte, however, dismissed the injunction case without prejudice, per its Order [6] dated 2 December 1987 on the ground that under Presidential Decree No. 385, no injunction can be issued against any government financial institution such as the DBP. [7]

Petitioners and DBP, as defendants, filed a Supplemental Joint Motion to Dismiss on 15 July 1988, [8] alleging that the complaint violates the rule on splitting of cause of action; that respondent spouses, as plaintiffs, have not established ownership of the properties subject of the case; and, that being real in classification the properties cannot be subject of a case for replevin.

On 21 July 1988, the RTC of Cagayan de Oro City deferred resolution of the Joint Motion to Dismiss and Supplemental Joint Motion to Dismiss on the ground that the supplemental motion alleged factual matters which need proof that may be presented only during trial. Petitioners, as defendants, were required to file their answers in the same Order.[9]

Petitioners and DBP filed their separate answers. DBP alleged in its Answer with Affirmative Defenses and Counterclaim[10] that the properties foreclosed were owned by Raymundo Calo and that when it bought the properties at the auction sale, it became a mortgagee in good faith and for value. DBP prayed that the complaint be dismissed but in the event that a decision adverse to it is rendered, respondent spouses, as plaintiffs, be made to reimburse the amounts it paid for the properties.[11]

Petitioners, a defendants, in their Answer with Counterclaim and Affirmative Defenses,[12] did not deny respondent spouses' ownership of the properties but claimed that they too advanced some money to purchase the properties. They add that the money promised by respondent spouses came in small and inadequate installments, making it impossible for petitioners to make the plant operational and forcing them to advance their own money and incur personal obligations to third parties in order to make the business productive. They further allege that the loan with DBP was actually with the knowledge and consent of respondent spouses.[13]

After pre-trial, respondent spouses, as plaintiffs, presented Lydia Tan as their witness. On 30 May 1989, respondent Lydia Tan testified that after she and her husband had agreed to the joint venture, they gave money in installments totaling P700,000.00 to Raymundo Calo, as evidenced by cash vouchers and checks. Some of the money given was used to pay for the equipment bought by Raymundo Calo.[14] In the course of the direct examination, counsel for petitioners objected to Lydia Tan's testimony that they sent money to respondent spouses after the equipment had been bought, the same not having been alleged in the complaint.[15]

After presentation of their witness, counsel for respondent spouses moved to reset the continuation of trial as they intended to amend the complaint to make it conform to the testimony of Lydia Tan. However, before respondent spouses could present their amended complaint, they learned that DBP had leased the properties to a third party. Respondent spouses moved that DBP be required to report on the status of the properties.[16] This was granted in the Order of 10 July 1989.[17]

On 6 November 1989, DBP filed its Manifestation of Compliance[18] stating that the properties were leased to one Alfredo C. Roxas as evidenced by the attached copy of the contract of lease.

Respondent spouses then filed their Motion to Admit Amended Complaint[19] and attached Amended Complaint,[20] both of which were admitted on 5 December 1989. The Amended Complaint included Alfredo C. Roxas as one of the defendants. However, summons could not be served on Roxas as he could no longer be located at his home address or his office address.[21]

Trial was constantly set and reset on motion of the parties. Finally, on 12 August 1991, the cross-examination of Lydia Tan was accomplished.[22] Subsequent dates for presentation of the evidence for petitioners as defendants were scheduled and later reset.

On 29 June 1992, petitioners and DBP filed a Joint Motion to Dismiss[23] grounded on respondent spouses' failure to pay the additional filing and docket fees for the amended complaint, in line with the ruling in *Manchester Development Corporation v. Court of Appeals*. [24] Petitioners alleged that in the course of the presentation of respondent Lydia Tan's testimony, the counsel for respondent spouses asked questions regarding damages and amounts of money not alleged in the complaint and for which the appropriate filing and docket fees should be paid. Petitioners requested that hearing on the motion be set on 1 July 1992.[25] In the Order[26] dated

1 July 1992, the trial court denied the motion for lack of the required notice and reset the presentation of evidence for petitioners Calo and DBP, as defendants, on 3 and 4 August 1992, respectively.

Petitioners filed a Joint Motion for Reconsideration[27] averring that it had furnished respondents, through their counsel, a copy of the joint motion to dismiss, as evidenced by the registry receipt dated 26 June 1992 of the Post Office of Butuan City, Agusan del Norte attached to the motion. Petitioners set the hearing of the motion on 3 August 1992. However, reconsideration was denied in the Order[28] dated 3 August 1992, the RTC ruling that the motion did not contain a notice of hearing and that the docketing fee had already been paid. Petitioners and their counsel also failed to appear at the hearing scheduled on even date and were deemed to have waived their right to present evidence; thus, the case was deemed submitted for decision.

On 28 August 1992, the RTC promulgated its Decision[29] in favor of respondent spouses, declaring them the lawful owners of the properties subject of the chattel mortgage and therefore entitled to the recovery thereof. The RTC relied only on the testimony of respondent Lydia Tan that she and her husband are owners of the mining equipment, petitioners having failed to appear during the hearings set for the presentation of their evidence. The RTC further found that petitioner Raymundo Calo obtained the loan from DBP without the knowledge of respondent spouses. With DBP deemed a mortgagee in good faith and for value, it was ordered to deliver possession and ownership of the properties to respondent spouses while petitioners were ordered to reimburse DBP the amount of P237,564.43. Thus, petitioners appealed the Decision to the Court of Appeals.

On 7 November 2001, the appellate court rendered its Decision[30] affirming the trial court's judgment. The Court of Appeals found *Sun Insurance Office, Ltd. v. Asuncion*[31] to be applicable to the case so that while the additional docket fees were paid late,[32] petitioners however failed to show that such payment was made beyond the prescriptive period. Hence, the trial court was deemed to have acquired jurisdiction over the case. The Court of Appeals did not give much weight to petitioners' contention that the trial court erred in ascribing waiver of their right to present evidence at the hearing on 3 August 1992 since, according to them, their motion for reconsideration was then allegedly pending resolution. The appellate court noted that petitioners were notified of the hearing on said date, as in fact they themselves even chose the date of hearing. Thus, it ruled that petitioners should not have assumed that their motion would be granted.

The appellate court also ruled that the RTC was correct in finding that respondent spouses are the owners of the subject properties, ordering DBP to retrieve them from the lessee and to return them to petitioner spouses, and directing petitioners to reimburse DBP the amount paid at the auction sale. The Court of Appeals found that the agreement between petitioners and respondent spouses was actually a joint venture and not a partnership as petitioners claimed since there was no agreement to contribute money or property to a common fund. Also, petitioners should reimburse DBP the amount it paid at the auction sale since under Article 559 of the Civil Code, the owner who is deprived of his property may obtain the return thereof after reimbursing the price in case the possessor acquired it in a public sale.

Petitioners now assail the Decision of the Court of Appeals in this petition for review on certiorari.

We deny the petition.

Petitioners allege that the Court of Appeals erred in upholding the trial court's denial of their right to due process. According to them, the trial court acted unreasonably and with undue haste when it ruled that they waived their right to present evidence in view of their failure to attend the hearing on 3 August 1992. They assert that they did show up in court for the hearing, although they were late. Petitioners live in Butuan City, some 300 kilometers from the RTC of Cagayan. They explain that they failed to appear because they believed that their motion to dismiss and motion for reconsideration would be heard first, i.e., respondent spouses would be required to

comment first on the motions before they would be resolved. They contend that there was no clear evidence of intent to abandon their right.

Petitioners' arguments do not impress. The reasons that petitioners have given for their failure to attend the hearing are contradictory. In one breath, they allege that they came late to the hearing, but in another they confirm that they intentionally did not attend the hearing due to their mistaken belief that respondent spouses would first be required to comment thereon before the trial court would resolve said motions. A check of the RTC records shows that although petitioners had chosen 1 July 1999 as the next hearing date in their Joint Motion to Dismiss, the trial court had already previously scheduled the continuation of trial on said date as well as on 2 July 1992.[33] However, on 1 July 1992, only counsel for respondent spouses was present. Petitioners, DBP, and their counsel did not attend the hearing.[34] The trial court denied the motion to dismiss for lack of notice and set the continuation of trial on 3 and 4 August 1992. When petitioners moved for reconsideration of the 1 July 1992 Order, they scheduled the hearing of said motion on 3 August 1992. Again, on the date set, petitioners and their counsel were absent and only counsel for respondent spouses was in attendance.[35]

That the absence of a party during trial constitutes waiver of his right to present evidence and cross-examine the opponent's witnesses is firmly supported by jurisprudence.[36] Although a defendant who answered the complaint but fails to appear at the scheduled trial cannot be declared in default, the trial, however, may proceed without his presence. And if the absence of a party during the hearing was due to his own fault, he cannot later on complain that he was deprived of his day in court.[37]

The absence of petitioners and their counsel at the aforesaid hearings cannot be justified by their belief that the trial court would first require respondent spouses to comment to or oppose the motions before resolving them. The Rules of Court requires only that the motion be heard; it does not direct the court to order the filing of comments or oppositions to the motion before the motion is resolved. During the hearing on the motion, the opposition to the motion and the arguments of the parties may be ventilated; thereafter, the court may rule on the motion. Petitioners and their counsel should have known the significance of the hearing dates since petitioners themselves chose one of the hearing dates and the hearing dates were accordingly fixed with due notice to all the parties.

Petitioners contend that the Court of Appeals erred in applying Sun Insurance instead of Manchester to the case at bar. The proceeding in this case was initiated by the filing of the complaint on 9 November 1987, which was around six months after Manchester was promulgated on 7 May 1987, and about fifteen months before Sun Insurance came out on 13 February 1989. According to petitioners, what must govern the court's jurisdiction is the law prevailing at the time of the institution of the case. Hence, since the original complaint was filed on 9 November 1987 the Manchester doctrine would be controlling and applicable, not Sun Insurance.

This argument is untenable. Statutes and rules regulating the procedure of courts are considered as applicable to actions pending and unresolved at the time of their passage. Procedural laws and rules are retroactive in that sense and to that extent. The effect of procedural statutes and rules on the rights of the litigants may not preclude their retroactive application to pending actions. Such retroactive application does not violate any right of a person adversely affected. Neither is it constitutionally objectionable. The reason is that as a general rule, no vested right may attach to, nor arise from procedural laws and rules. 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, of any other than the existing rules of procedure." [38]

The Court of Appeals erred, according to petitioners, in not finding that respondent spouses' cause of action had already prescribed when the additional docket fees were paid in 1992. The alleged dispossession of the properties occurred in 1986 when petitioner Raymundo Calo contracted a loan with DBP; hence, respondent spouses' right to

recover had already prescribed in 1990, petitioners stress.

Under Art. 1140 of the Civil Code, actions to recover movables prescribe in eight years from the time the possession thereof is lost.[39] Hence, respondent spouses' right to recover would prescribe only in 1994. As the additional docket fees were paid in 1992, well within the prescriptive period, the trial court's jurisdiction over the action was solidified following *Sun Life*.

Petitioners finally argue that the RTC of Cagayan de Oro City erred in disregarding the grounds of forum-shopping, *litis pendentia*, and splitting of cause of action which they raised. They explain that when the complaint for replevin and damages was filed, petitioners moved for its dismissal on the grounds of *litis pendentia* and splitting of cause of action since the civil case for injunction of the foreclosure sale was then still pending before the RTC of Agusan del Norte. However, the Cagayan de Oro RTC deferred ruling on the motion to dismiss. Said RTC, petitioners contend, should have noted that the claim for damages constitutes splitting of a cause of action. The second complaint for replevin and damages should have been dismissed then as both suits have the same cause of action, that is, the alleged surreptitious loan entered into by petitioners with DBP. The complaints before the two trial courts supposedly show that the elements of *res judicata* are present. When respondent spouses moved for reconsideration of the dismissal of the injunction case by the Agusan del Norte RTC, the same was denied "finally", or as interpreted by respondent spouses, with prejudice. In view of the foregoing, petitioners claim that the trial court erred in not holding respondent spouses guilty of forum-shopping and forthwith dismissing the case.

It should be noted that this final argument was never raised before the Court of Appeals. That respondent spouses violated the rule on splitting of cause of action was brought before the RTC only in the Joint Motion to Dismiss and Supplemental Joint Motion to Dismiss which were not resolved; instead, resolution of the motions was deferred until respondent spouses' presentation of evidence. However, there is still no definite ruling on the motions, even in the Decision of the trial court. The Decision also did not discuss the splitting of cause of action allegedly committed by petitioners in filing the two complaints.

The principles of *litis pendentia*, *res judicata* and forum-shopping are all based on the policy against multiplicity of suits. A party is guilty of forum-shopping where he repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court.[40] The test to determine whether a party violated the rule against forum-shopping is where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.[41]

If we look closely at the two complaints, we will find that there could be forum-shopping. In the case for injunction before the Agusan RTC, respondent spouses prayed "that a restraining order and/or preliminary injunction be issued forthwith to restrain defendants from . . . proceeding with the public auction on 12 October 1987; and that after trial, said injunction be made permanent, with litigation expenses and attorney's fees awarded to plaintiffs, plus cost of this suit." [42] Respondent spouses claim that they were "the true, lawful and absolute owner[s] of the properties." In the case for replevin and damages, respondent spouses seek the return of the possession of the property auctioned off to DBP as the highest bidder, claiming that they were rightful owners of the property.

The propriety of the issuance of the writ of injunction would depend on the finding that respondent spouses have a clear legal right to the property. This would require the trial court, in this case the Agusan RTC, to make a finding of fact with respect to the existence of such legal right to be protected. This issue of fact—who between the parties

has the better right to the property—is the same issue presented in the case for replevin and damages before the Cagayan RTC.

The case for replevin and damages was clearly dismissible on the ground of forum-shopping. However, that the case for replevin should have been dismissed because it was filed subsequent to the case for injunction does not always hold true. To determine which action should be dismissed given the pendency of two actions, relevant considerations such as the following are taken into account: (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 latter 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.[43]

Although in general, the rule is that it should be the later case which should be dismissed, this rule is not absolute such as when the latter action filed would be the more appropriate forum for the ventilation of the issues between the parties.[44] This is particularly true in the case at bar where the case for injunction had already been dismissed without prejudice by the RTC, and such dismissal had been affirmed by the Court of Appeals as well as by this Court.[45] We cannot simply dismiss the case for replevin and damages on the ground of forum-shopping and leave it at that, for such modality would not be in keeping with the demands of judicial policy as well as equity. Dismissal of the case for replevin and damages would leave respondent spouses without a remedy in view of the earlier dismissal of the case for injunction. The rule prohibiting forum-shopping was designed to promote and facilitate the orderly administration of justice. It should not be interpreted with such absolute literalness as to defeat its ultimate objective which is to achieve substantial justice as expeditiously as possible.[46]

WHEREFORE, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Chico-Nazario, J., on leave

[1]Records, pp. 10-12.

[2] Rollo, pp. 106-113.

[3] Id. at 114-117.

[4]Id. at 114.

[5] The certified true copy of the Complaint in Special Civil Case No. 521 shows that it was filed on 12 October 1987. Id. at 118-124.

[6] Id. at 125.

[7]A timely motion for reconsideration of the Order of 2 December 1987 filed by respondent spouses was denied by the RTC on 10 June 1988 on the ground that the acts sought to be enjoined were already consummated. Respondent spouses appealed to the Court of Appeals. On 16 August 1989, the appellate court affirmed the Orders of the RTC. The Decision of the Court of Appeals states:

"The court a quo likewise observed that the plaintiffs have already filed Civil Case No. 11185 for Replevin, Breach of Contract and Damages in the Regional Trial Court of the Tenth Judicial Region, Branch 24 in Cagayan de Oro City. Considering that the acts sought to be enjoined were already consummated when the writ of preliminary injunction was served on the defendants-appellees and taking into account Section 2 of

P.D. 385 and considering further that there is a pending case between the same parties in the Regional Trial Court of the Tenth Judicial Region, Branch 24 in Cagayan de Oro among others for the delivery to the plaintiffs of the properties in question, we find the Order of the court a quo dated 2 December 1987 and the Order dated 10 June 1988 (Motion for Reconsideration) to be supported by the facts and in consonance with the law and are hereby AFFIRMED.

IT IS SO ORDERED." Id. at 189-191.

It appears that respondent spouses elevated the case to the Supreme Court via a petition for certiorari with prayer for a writ of preliminary injunction/restraining order but the same was denied on 5 April 1990, there being no reversible error committed on the part of the Court of Appeals and for having become moot and academic in view of the action for replevin and damages before the RTC of Cagayan de Oro City, Branch 24 filed by respondent spouses. Id. at 193.

[8] Supra note 1 at 173-179.

[9] Supra note 2 at 126.

[10] Supra note 1 at 196-200.

[11] Ibid.

[12] Id. at 206-211.

[13] Id. at 206-211.

[14] TSN, 30 May 1989, pp. 5-7, 11-19, 22-36.

[15] Id. .at 9-11.

[16] Supra note 1 at 292-293.

[17] Id. at 294.

[18] Id. at 342-343.

[19] Id. at 354-355.

[20] Id. at 367-375.

[21] Per Sheriff's Return of Service dated 4 April 1991, id. at 519, and 26 October 1991, id. at 594.

[22] Per Order of 12 August 1991, id. at 559. However, the TSN of said cross-examination is not included in the Records.

[23] Supra note 2 at 127-130.

[24] No. L-75919, 7 May 1987, 149 SCRA 562.

[25] Supra note 2 at 128.

[26] Id. at 131.

[27] Id. at 132-135.

[28] Id. at 136.

[29] Id. at 137-143.

[30] Id. at 144-151.

[31] G.R. Nos. 79937-38, 13 February 1989, 170 SCRA 274.

[32] According to petitioners, the additional filing and docket fees were paid only on 29 July 1990. Joint Appellants' Brief, CA Rollo, p. 49.

[33] RTC Records, p. 630. A Notice of Hearing scheduling continuation of trial on said dates was sent to the respective counsel of the parties on 29 May 1992.

[34] Minutes of the Court Session of the RTC of Cagayan de Oro City on 1 July 1992. Id. at 641.

[35] Minutes of the Court Session on 3 August 1992. Id. at 650.

[36] *Adorable v. Court of Appeals*, 377 Phil. 210 (1999), citing *Jalover v. Ytoriaga*, 80 SCRA 101 (1977) and *De Rapisura v. Nicolas*, 16 SCRA 798 (1966).

[37] *Republic v. General Sales Supply Co., Inc.*, 134 Phil. 864, 872 (1968).

[38] *Tan, Jr. v. Court of Appeals*, 424 Phil. 556, 569 (2002); *Sps. Valenzuela v. Court of Appeals*, 416 Phil. 289, 298 (2001).

[39] The full text of Art. 1140 reads: "Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor has acquired the ownership by prescription for a less period, according to Article 1132, and without prejudice to the provisions of Articles 559, 1505, and 1133."

[40] *Gatmaytan v. Court of Appeals*, 335 Phil. 155, 167 (1997).

[41] *Solid Homes, Inc. v. Court of Appeals*, 337 Phil. 605, 615 (1997) citing *First International Bank v. Court of Appeals*, 252 SCRA 259 (1996).

[42] *Supra* note 1 at 150.

[43] *Cruz v. Court of Appeals*, 369 Phil. 161, 170-171 (1999), citing *Allied Banking Corporation vs. Court of Appeals*, 259 SCRA 371 (1996).

[44] *Ibid.*

[45] See note 7.

[46] *Gabioza v. Court of Appeals*, G.R. No. 112547, 18 July 1994, 234 SCRA 192, 198.

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