

INTRAMUROS ADMINISTRATION, PETITIONER, VS. YVETTE CONTACTO AND GREGORIO LUIS C. CONTACTO III, RESPONDENTS.

G.R. No. 152576. May 05, 2003

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

In its petition for review on certiorari in this case, petitioner Intramuros Administration seeks the review and reversal of the 28 February 2002 Decision of the Court of Appeals in CA-G.R. SP No. 63815, which set aside the orders of the Regional Trial Court of Manila, Branch 9, in Civil Case No. 98-90835 and granted respondent's motion to dismiss on the ground of *litis pendentia*.

On 21 January 1993, the petitioner and respondent Yvette Contacto entered into a contract^[1] for the lease of petitioner's premises known as "Cantinas de Aduana" (Cantinas) to the latter to establish a fastfood and restaurant business. The lease was for a period of five years, from 1 February 1993 to 31 January 1998, at a monthly rental of P36,000. Yvette was to assume the payment of water and other utility expenses, and secure appropriate licenses and permits.

Shortly after the lease contract went into effect, Yvette began complaining of the petitioner's failure to make good its alleged representations made prior to and during the execution of the lease contract that it would evict the sidewalk vendors outside the leased premises.^[2] She also alleged to have suffered losses in income due to the presence of the sidewalk vendors.

In the next two years of the contract, Yvette additionally complained of inadequate facilities of the Cantinas, which allegedly resulted in the suspension of her license and denial of her permit applications by the Manila Health Department. She further claimed that in August 1995, she was constrained to rehabilitate the Cantinas on her own, resulting in the significant increase in her food sales. During this time, however, Yvette did not pay the stipulated rent. Thus, between 1994 and 1995, the petitioner and Yvette entered into three agreements allowing the latter to restructure her outstanding obligations.^[3] Still, Yvette failed to pay the accrued rentals.

On 16 January 1996, Yvette received a letter from the petitioner requiring her to pay her unsettled accounts and to vacate the premises under threat of closure, within five days from receipt of the letter. With the advise of then Secretary of the Department of Tourism Eduardo Pilapil, she attempted to hold a conference with the petitioner in order to prevent the closure, but this attempt failed.^[4] On 22 January 1996, the scheduled date of the closure, Yvette hurriedly filed with the Regional Trial Court (RTC) of Manila a complaint for preliminary injunction, with a prayer for specific performance and damages. She prayed that the petitioner be ordered to (1) desist from enforcing the closure order; (2) offset all the expenses that she incurred or might incur as a result of assuming petitioner's obligation to make the leased premises fit for its intended use; (3) reduce the monthly rental from P36,000 to P18,000, retroactive 1 February 1993 up to the expiration of the contract in 1998; and (4) pay her actual and exemplary damages, attorney's fees, and cost of suit.

The complaint was docketed as Civil Case No. 96-767-44 and assigned to Branch 26 of the court. In its order of

23 January 1996, the court granted the prayer for a temporary restraining order.[5] On 15 February 1996, it issued a writ of preliminary mandatory injunction ordering the petitioner to reopen the leased premises, reconnect the water and electrical services in the leased premises,[6] and allow Yvette to operate the Cantinas.

On 17 September 1998, pending the resolution of Civil Case No. 96-767-44 but after the expiration of the lease contract, the petitioner filed with the RTC of Manila a complaint[7] against respondent spouses Yvette and Gregorio Contacto. It alleged that the respondents occupied the leased premises for the entire five years stipulated in the contract; however, they defaulted in the payment not only of their monthly rentals from May 1995 until 31 January 1998 when they vacated the leased premises but also the water bills and electric bills. It then prayed that the respondents be ordered to pay (1) P3,069,225.13,[8] representing unpaid rentals, penalty, surcharges and interest, and electric and water bills after deducting their deposit of P72,000; (2) P500,000 as exemplary damages; (3) attorneys fees equivalent to 20 percent of the total award; and (4) interest on the monetary claims. The complaint was docketed as Civil Case No. 98-90835 and assigned to Branch 9 of said court.

On 12 March 1999, the respondents filed in Civil Case No. 98-90835 a Motion to Dismiss on the ground of *litis pendentia*,[9] i.e., the pendency of Civil Case No. 96-767-44 in Branch 26 of the RTC of Manila.

In its order of 2 December 1999, Branch 9 of the RTC denied[10] the motion to dismiss. It also denied the motion for reconsideration[11] in its order of 8 September 2000. Hence, the respondents filed with the Court of Appeals a special civil action for certiorari, docketed as CA-G.R. SP No. 63815.

After due proceedings, the Court of Appeals rendered a decision dated 28 February 2002 granting the petition; declaring as null and void the 2 December 1999 and 8 September 2000 orders of Branch 9 of the RTC of Manila; and dismissing Civil Case No. 98-90835 on the ground of *litis pendentia*.^[12]

Unsatisfied with the decision, the petitioner filed the petition in this case. It alleges that (a) the Court of Appeals erred in holding that Civil Case No. 98-90835 is barred by *litis pendentia*; and (b) even assuming that the trial court erred in perfunctorily denying respondents' motion to dismiss, the error would not change the fact that there is no *litis pendentia* in the cases below, and hence, in the interest of substantial justice, the complaint in Civil Case No. 98-90835 should be reinstated.

On the other hand, the respondents allege that the petition does not raise a substantial issue or question. The Court of Appeals correctly ruled (1) that the orders denying the motion to dismiss and the motion for reconsideration were perfunctory in nature, since they did not clearly and distinctly state the reason for such denial; and (2) that the filing of Civil Case No. 98-90835 is barred by the pendency of Civil Case No. 96-767-44 because both cases flow from the same contract of lease and are based on the demand of both parties against each other to perform their obligations under the contract.

We agree with the Court of Appeals and the respondents that the trial court's order denying the motion to dismiss was perfunctory in nature. The order reads:

For resolution of this Court is a Motion to Dismiss filed by defendant through counsel, on grounds that there is another action pending between the same parties for the same cause.

Finding no merit therein, the Motion to Dismiss is hereby Denied.

SO ORDERED.

The aforequoted order did not state clearly and distinctly the reason for denying the motion to dismiss, thereby violating the mandate in Section 3, Rule 16 of the 1997 Rules of Civil Procedure, which provides:

SEC 3. Resolution of motion.— After the hearing, the court may dismiss the action or claim, deny the motion,

or order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.

In every case, the resolution shall state clearly and distinctly the reasons therefor.

The reason "no merit" stated in the order is not sufficient compliance with the abovequoted rule. It has been frowned upon by the Court, for it "often creates difficulty and misunderstanding on the part of the aggrieved party in taking recourse therefrom and likewise in the higher court called upon to resolve the issue." [13]

Nonetheless, respondents' motion to dismiss on the ground of *litis pendentia* cannot prosper.

In order to grant a motion to dismiss on the ground of *litis pendentia*, the following requisites must concur: (a) there must be an identity of parties, or at least such parties as representing the same interests in both actions; (b) there must be an identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the other. [14]

The identity of the parties being apparent and uncontroverted, we proceed to the second and third requisites.

There are several tests of ascertaining whether two suits relate to a single or common cause of action, such as (1) whether the same evidence would support and sustain both the first and second causes of action; [15] or (2) whether the defenses in one case maybe used to substantiate the complaint in the other. [16]

The determination of whether there is an identity of causes of action for purposes of *litis pendentia* is inextricably linked with that of *res judicata*, each constituting an element of the other. In either case, both relate to the desire to include, in a single litigation, the settlement of all issues relating to a cause of action that is before a court. [17] This is the reason for their invocation in cases where one party splits a cause of action by, for example, filing separate cases to recover separate reliefs for a single cause of action, or in cases where a defendant files another case arising from what should have been pleaded in a compulsory counterclaim. In sum, it is a matter of policy, for efficient justice, "to prevent repeated litigation between the same parties in regard to the same subject of controversy; to protect defendant from unnecessary vexation; and to avoid the costs and expenses incident to numerous suits." [18]

In the first case, Civil Case No. 96-767-44, respondent Yvette Contacto, as a lessee, asserts her right under the lease contract to occupy the leased premises and to use the same for the purpose for which it was intended. On the other hand, in the second case, Civil Case No. 98-90835, the petitioner asserts its right as a former lessor to demand payment from the respondents, as former lessees, of the stipulated rentals, penalty, and surcharges, as well as water and electric bills.

As regards the reliefs sought, Yvette prays in the first case for (1) the issuance of an injunction ordering the petitioner to desist from closing the leased premises; (2) the set-off of her accountabilities against the expenses she incurred or might incur in assuming petitioner's obligations under the contract; (3) the reduction of the monthly rental from P36,000 to P18,000; and (4) the payment of actual and exemplary damages, attorney's fees, and cost of the suit. In the second case, the petitioner prays for the payment by the respondents of back rentals from May 1995 until 31 January 1998, water and electric bills, penalty and interests, exemplary damages, and attorney's fees.

The reliefs prayed for in the first case are anchored on the then impending closure of the leased premises, as well as the alleged failure or refusal of the petitioner to evict the sidewalk vendors in the area and improve the facilities

in the leased premises. The second case is based on the refusal of the respondents to pay the monthly rentals from May 1995 up to 31 January 1998 when they vacated the leased premises, as well as the water and electric bills.

From the foregoing, it is clear that there is as between the two actions no identity of rights asserted and reliefs prayed for, as well as of the facts from which the reliefs are founded. It is not therefore likely that petitioner's defense in the first case, which was filed by the respondents, would be in pursuit of its theory as plaintiff in the second case.[19]

Applying our pronouncement in *Cruz v. Court of Appeals*,[20] the Court of Appeals concluded that the causes of action in Civil Cases Nos. 96-767-44 and 98-90835 are identical because both parties claimed a breach of an obligation under the same lease contract:

There is substantial identity in the cause of action in the two cases. Both cases are based on the demand of both parties against each other to perform their obligations under the same contract.

The Complaint instituted by the respondent Intramuros Administration against the herein petitioners as lessees are [sic] based on the same contract of lease. The Intramuros Administration lodged said Complaint in the respondent Court to demand payment for rentals and utility bills [that] accrued during the existence of the contract of lease.

On the other hand, in the earlier case filed by herein petitioners against Intramuros Administration as lessors [sic] which was given due course in RTC, Branch 26, Manila, was also for specific performance and damages with prayer for preliminary injunction under the same contract.

...

The motion to dismiss has shown that these elements for *litis pendentia* to apply are present. The basic issue of the controversy in both cases is the determination of the compliance by the parties of the terms and conditions of their contract. The parties in both actions will be relying on the same contract which is the fountain of the controversy in Civil Case No. 98-9835 and Civil Case No. 96-767-44.[21]

The Court of Appeals, however, overlooked the fact that there is more to determining the identity of the causes of action than an identity of contract. More fundamental is whether the cause of action in the second case existed at the time of the filing of the complaint or answer with counterclaim, as the case may be.[22]

We have held that when a lease provides for the payment of the rent in installments, each failure to pay an installment is a separate cause of action. However, in an action upon such a lease for the recovery of rent, all installments due and demandable at the time the action is brought should be pleaded, and failure to do so will constitute a bar to a subsequent action for the payment of that rent.[23] The lessor is not, therefore, barred from claiming installments that were not paid thereafter, for the simple reason that that the cause of action did not exist at the time. This is especially true in this case in light of the admissions by both parties to this case.

Although Civil Case No. 96-767-44 was filed after the contract had been in force for two years, the respondents continued to occupy the leased premises until the expiration of the contracted term. Since the obligations of the parties under that contract and other supplementary agreements still existed, there also existed a relief for any further breach of the rights or obligations under the contract. This further breach of rights or obligations cannot be deemed to have been necessarily included in the issues raised in Civil Case No. 96-767-44.

What could be barred by *litis pendentia* are the rentals which were due and demandable at the time of the filing of petitioner's answer, since they could be pleaded as counterclaims. It has been held that *lis pendens* may also be interposed even if the claim is set forth by way of a counterclaim, since the latter partakes of the nature of a complaint by the defendant against the plaintiff. To interpose a cause of action in a counterclaim and again

advance the same in a complaint against the same party would be violative of the rule against splitting a cause of action.[24] However, petitioner's claims of back rentals after its filing of an answer with counterclaim in the first case constituted distinct causes of action and cannot be barred by *litis pendentia*.

Prudence and efficiency dictate that the petitioner should have, with the permission of the court, filed a supplemental pleading, like a supplemental answer with additional counterclaim, in the first case to cover those rentals and claims that matured after it filed its answer. This would be in accordance with Section 6 of Rule 10 and Section 9 of Rule 11 of the 1997 Rules of Civil Procedure, which provides:

Sec. 6. Supplemental pleadings.— Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleadings.

The adverse party should file an answer to a supplemental complaint inasmuch as his original answer does not ordinarily cover the subsequent events.

...

Sec. 9. Counterclaim or cross-claim arising after answer.— A counterclaim or a cross-claim which either matured or was acquired by a party after serving his pleading may, with the permission of the court, be presented as a counterclaim or a cross-claim by supplemental pleading before judgment.

Such a counterclaim or cross-claim is not, however, compulsory.[25] Thus, a party who fails to interpose a counterclaim although arising out of, or is necessarily connected with, the transaction or occurrence of the plaintiff's suit but which did not exist or mature at the time said party files his answer is not thereby barred from interposing such claim in a future litigation.[26]

As for the third requisite of *litis pendentia*, we likewise find it absent in this case. Again, we first refer to the findings of the Court of Appeals:

The result of the case filed by herein petitioner against Intramuros Administration in Civil Case No. 96-767-44 at any event is determinative of the rights of Intramuros Administration to properly institute Civil Case No. 98-90835.

If the Intramuros Administration [would] be found for breach of its obligations under the same contract and the reliefs sought by herein petitioners in the first civil case [would be]s upheld to offset the expenses she incurred with the payments of rentals and utility bills under the contract of lease, the petitioner could not be held liable for the payment of the accrued rentals as alleged by the Intramuros Administration.[27]

It should be noted that the Court of Appeals only considered the applicability of *res judicata* in the event the respondents prevailed. However, for the third requisite of *litis pendentia* to apply, there should be *res judicata* regardless of which party is successful.

In this case, it cannot be said that a judgment in Civil Case No. 96-767-44 would have settled all matters concerning the rights and obligations of the parties under the contract. Regardless of which party prevails, the judgment therein would not necessarily resolve petitioner's claim for subsequent back rentals, and would not therefore constitute *res judicata* as to the second case. As earlier stated, *litis pendentia* would operate to bar only those which were due and demandable at the time of the filing of its answer. Conversely, *litis pendentia* would be inapplicable for obligations subsequently incurred.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered REVERSING and SETTING ASIDE the decision of the Court of Appeals in C.A.-G.R. SP No. 63815 insofar as all causes of action

or claims arising after the filing by the petitioner of an answer with counterclaim in Civil Case No. 96-767-44 are concerned. The Regional Trial Court of Manila, Branch 9, is directed to act on Civil Case No. 98-90835 with deliberate dispatch.

Costs against respondents.

SO ORDERED.

Vitug, Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, 45.

[2] Rollo, 70-72.

[3] Id., 83.

[4] Id., 72-73.

[5] Rollo, 76.

[6] Id., 80.

[7] Id., 57.

[8] Id., 56.

[9] Rollo 64.

[10] Id., 87.

[11] Id., 88.

[12] Id., 36.

[13] Pefianco vs. Moral, G.R. No. 132248, 19 January 2000, 322 SCRA 439, 446.

[14] Vicronics Computers, Inc. vs. RTC, Branch 63, Makati, G.R. No. 104019, 25 January 1993, 217 SCRA 517, 529; Compania General de Tabacos de Filipinas, G.R. Nos. 130326 & 137868, 29 November 2001.

[15] Peñalosa v. Tuason, 22 Phil 303, 322 (1912); Pagsisihan v. Court of Appeals, L-34885, 28 January 1980, 95 SCRA 540, 549; Feliciano v. Court of Appeals, G.R. No. 123293, 5 March 1998, 287 SCRA 61, 68;

[16] Vicronics Computers, Inc. v. RTC, Branch 63, Makati, supra note 14, at 530.

[17] See 2 JOSE Y. FERIA AND MARIA CONCEPCION S. NOCHE, CIVIL PROCEDURE ANNOTATED 126 (2001) [hereinafter Feria & Noche]; 1 MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 598-599 (1995).

[18] 1 FERIA AND NOCHE 213.

[19] See Peñalosa v. Tuason, supra note 15, at 322; Vicronics Computers, Inc. v. RTC, Branch 63, Makati, supra note 14, at 530.

[20] G.R. No. 135101, 31 May 2000, 332 SCRA 747.

[21] Rollo, 42-44.

[22] National Marketing Corporation v. Federation of United Namarco Distributors, Inc., G.R. No. L-22578, 31 January 1973, 49 SCRA 238, 268.

[23] Rubio de Larena v. Villanueva, 53 Phil 923, 927-928 (1928).

[24] Arceo vs. Oliveros, 219 Phil. 279 (1985).

[25] JOSE Y. FERIA, 1997 RULES OF CIVIL PROCEDURE AS AMENDED 42 (1997).

[26] National Marketing Corporation vs. Federation of United Namarco Distributors, Inc., supra note 22, at 269.

[27] Rollo, 43.

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