

**MID PASIG LAND DEVELOPMENT CORPORATION, PETITIONER, VS.
COURT OF APPEALS, HON.RODRIGO B. LORENZO, IN HIS CAPACITY
AS PRESIDING JUDGE OF RTC-PASIG CITY, BRANCH 266 AND
ROCKLAND C...**

G.R. No. 153751. October 08, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On December 6, 1999, petitioner Mid-Pasig Land Development Corporation leased a portion of its sequestered property to ECRM Enterprises (ECRM). The leased area, which measures approximately one hectare, is part of two lots registered under TCT Nos. 469702 and 337158 [1] of the Register of Deeds of Pasig City and is bounded by Meralco Avenue, Ortigas Avenue, Dona Julia Vargas Avenue and Valle Verde Subdivision. ECRM intended to use the area as staging ground for its "Home and Garden Exhibition" from December 15, 1999 to March 15, 2000.

Under the contract of lease, [2] ECRM agreed to pay petitioner the amount of P1,650,000.00 as rental for three months, inclusive of 10% value-added tax, with option to renew. The parties also stipulated that upon expiration of the lease agreement, ECRM shall without delay or need of demand, turn over the property to petitioner in the same or improved condition. In case the contract is not renewed, ECRM would remove all temporary improvements at its own expense within seven days after expiration of the lease.

On March 6, 2000, ECRM irrevocably and absolutely assigned to Laurie M. Litam and/or respondent Rockland Construction Company, Inc. all its rights under the lease agreement. The deed of assignment [3] provided for a total consideration of P1,650,000.00 and declared that thenceforth, respondent would have full control of the leased property including right to the extension of the lease period.

Pursuant to the foregoing deed of assignment, respondent, in lieu of ECRM, delivered to petitioner the total sum of P1,650,000.00 as rental payment for the period of April 15 to July 15, 2000. Petitioner accepted the amount and issued the corresponding official receipt. [4]

Later, respondent verbally requested petitioner for a renewal of the lease for a term of three (3) years. This was followed by a letter sent by respondent to petitioner explaining that the three-year term would enable it to plan its activities more efficiently. [5] Before the request was acted upon, petitioner retroactively increased the monthly rental to P770,000.00 per month effective April 15, 2000. Respondent apparently agreed to the increased rate and paid petitioner the rent differential. [6]

Meanwhile, respondent erected a building on the leased area, also known as the "Payanig sa Pasig" site, and sub-leased certain portions thereof. However, in the first week of January 2001, respondent received information that its sub-lessees were served by petitioner with notices to vacate the property. Even if it did not receive a similar notice, respondent nevertheless wrote petitioner on January 5, 2001, requesting that a formal three-year

lease contract be executed in its favor. [7]

On January 8, 2001, petitioner wrote respondent claiming, among others, that it had not entered into any form of agreement with the latter. As a matter of fact, petitioner stated that it had "already undertaken the necessary steps to evict Rockland and the other possessors of the premises." [8] Petitioner claimed that the assignment of the lease to respondent was not valid as it was done without its consent and that provisions of the lease agreement were violated.

Respondent thus filed, on January 11, 2001, a complaint for specific performance with prayer for the issuance of a temporary restraining order/writ of preliminary injunction. The case was raffled to Branch 266 of the Regional Trial Court of Pasig City where it was docketed as Civil Case No. 68213.

In its complaint, [9] respondent argued that it had actually entered into a new lease contract with petitioner for a three-year term despite the lack of any written agreement. By unqualifiedly and continuously accepting rental payments as well as allowing respondent to remain in the property, petitioner effectively accepted and ratified its offer of a three-year lease despite the absence of a categorical acceptance. The lease contract was thus perfected, giving respondent the right to compel petitioner to execute an agreement pursuant to Article 1357 [10] of the Civil Code.

Petitioner filed a motion to dismiss on the ground that the complaint was anticipatory in nature, failed to state a cause of action and was not authorized by respondent's Board of Directors. Moreover, respondent's claim is unenforceable under the Statute of Frauds and the verification as well as certification of non-forum shopping appended to the complaint did not comply with Sections 4 [11] and 5, [12] Rule 7 of the Rules of Court.

The resolution of petitioner's motion to dismiss was deferred after the parties manifested their mutual desire to amicably settle the controversy. When the parties failed to reach a compromise, petitioner's motion to dismiss was set for hearing on August 20, 2001, at which date petitioner manifested that it will file a complaint for ejectment as well as a supplemental motion to dismiss.

Accordingly, on August 22, 2001, petitioner filed Civil Case No. 8788 for unlawful detainer which was raffled to Branch 70 of the Metropolitan Trial Court of Pasig City. Almost simultaneously, petitioner filed a supplemental motion in Civil Case No. 68213 seeking its dismissal on the ground of *litis pendentia*.

Petitioner argued in its supplemental motion [13] that the issue of whether or not respondent should be allowed to continue occupying the land pursuant to the terms of the lease contract should be properly threshed out in the ejectment case.

On August 20, 2001, an order [14] was issued in Civil Case No. 68213 denying petitioner's motion to dismiss on the ground that respondent substantially complied with all the requirements for the filing of an initiatory pleading and that the complaint clearly stated a cause of action. Petitioner cannot likewise invoke the Statute of Frauds in seeking the dismissal of the complaint because the lease contract was already partially executed by the acceptance of rental payments. A motion for reconsideration was thereafter filed by petitioner. [15]

Petitioner's supplemental motion to dismiss was likewise denied by the trial court [16] on the ground that there was no *litis pendentia* between Civil Case No. 68213 and Civil Case No. 8788 for unlawful detainer, because there was no identity of causes of action between the two. Moreover, the Metropolitan Trial Court has no jurisdiction over cases that are incapable of pecuniary estimation, as in the specific performance case; it is thus the unlawful detainer case that should be dismissed since an action for specific performance based on contract properly pertains to the Regional Trial Court.

In the meantime, the Regional Trial Court, after hearing respondent's prayer for the issuance of a temporary restraining order, granted the same on September 11, 2001. Petitioner filed a motion for reconsideration of the order denying its motion to dismiss, [17] which was denied.

Petitioner thus filed a petition for certiorari under Rule 65 before the Court of Appeals, alleging that the Regional Trial Court gravely abused its discretion in refusing to dismiss the complaint in the specific performance case. The appellate court dismissed the petition on January 25, 2002 [18] and subsequently denied petitioner's motion for reconsideration. [19] Hence, petitioner elevated the matter to this court asserting that:

I

RESPONDENT COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT HELD THAT THE COMPLAINT FILED BY RESPONDENT ROCKLAND ALLEGES SUFFICIENT CAUSE OF ACTION FOR SPECIFIC PERFORMANCE.

II

RESPONDENT COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT HELD THAT THE STATUTE OF FRAUDS IS NOT APPLICABLE.

III

RESPONDENT COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT HELD THAT THERE WAS COMPLIANCE WITH SECTIONS 4 AND 5 OF RULE 7 OF THE 1997 RULES OF CIVIL PROCEDURE.

IV

RESPONDENT COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT HELD THAT THERE IS NO LITIS PENDENTIA. [20]

We need only to resolve the fourth issue, as its resolution will render the three preceding issues superfluous.

Petitioner contends that the appellate court erred in holding that *litis pendentia* could not be invoked in seeking dismissal of respondent's complaint for specific performance. Petitioner claims that there is identity of parties as well as rights and reliefs prayed for between the complaint pending before the Regional Trial Court and the second complaint for unlawful detainer filed with the Metropolitan Trial Court. All the elements of *litis pendentia* are present in the instant case, and a judgment in the first action will amount to *res judicata* in the second regardless of which party would prevail.

Petitioner likewise asserts that it is the complaint for specific performance that should be dismissed notwithstanding the fact that it was filed ahead of the unlawful detainer case. In *Teodoro, Jr. v. Mirasol*, [21] the first complaint for specific performance was dismissed even if it enjoyed priority in time, considering that the unlawful detainer case filed by respondent was held to be the proper forum for threshing out the real issue of whether or not a lessee should be allowed to continue occupying the property under a contract of lease.

We find merit in petitioner's assertions.

In order to sustain a dismissal of an action on the ground of *litis pendentia*, the following requisites must concur: (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) identity in the two cases should be such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to *res judicata* in the other. [22] We find the foregoing requisites present in the case at bar.

There can be no question that the parties in RTC Civil Case No. 68213 and MTC Civil Case No. 8788 are one and the same. Anent the second and third requisites, a careful examination of the averments of the complaint before the RTC reveals that the rights asserted and reliefs prayed for therein are no different from those pleaded in the MeTC case, such that a judgment in one case would effectively bar the prosecution of the other case.

A perusal of the complaint for specific performance shows that its main purpose was to prevent petitioner from ejecting respondent from the leased property. Although the complaint seeks to compel petitioner to execute a formal lease contract, its ultimate intent is to preclude petitioner from filing a complaint for ejectment and for respondent to maintain possession of the property. It must be noted that the right to the execution of a formal agreement is hinged upon the more fundamental issue of whether respondent has a right to the possession of the property under the alleged implied contract of lease. In other words, the central issue to be resolved in the specific performance case unmistakably boils down to respondent's alleged right to continued possession of the premises, which issue is essentially similar, if not identical, to the one raised in the unlawful detainer case before the MeTC.

Hence, the appellate court erred in finding that RTC Civil Case No. 68213 and MeTC Civil Case No. 8788 have different causes of action. As stated earlier, the ultimate relief sought in the RTC is not really "to compel the defendant to formalize in a public instrument its lease agreement with plaintiff", as the Court of Appeals held, but to enjoin petitioner from filing the proper action for respondent's ejectment so that it could remain in possession of the property. This is evident in respondent's prayer in the complaint for specific performance, where it expressly sought for the issuance of an order from the trial court "prohibiting defendant from instituting any action for the ejectment of plaintiff from the leased premises." [23]

Since the question of possession of the subject property is at the core of the two actions, it can be said that the parties in the instant petition are actually litigating over the same subject matter, which is the leased site, and on the same issue - respondent's right of possession by virtue of the alleged contract. As similarly observed in *Arceo v. Olivares*, [24] the only difference between the two cases herein is that respondent asserts, as a cause of action, its alleged contractual right to possession of the property in the RTC case, while the same matter is set forth as its counterclaim in the MeTC case where it is a defendant. However, the two cases are identical in all other respects, with merely a reversal of the parties' position in the two actions.

Thus, the next issue to be resolved is which of the two actions should be dismissed. Should it be the RTC case which was instituted ahead of the MeTC case? Or should it be the latter case which, although filed later, is the more appropriate action?

In *University Physician's Services, Inc. v. Court of Appeals*, [25] we held that it is the prior case for specific performance which should be dismissed, thus:

x x x while the case before the Court of First Instance of Cavite appears to be one for specific performance with damages, it cannot be denied that the real issue between the parties is whether or not the lessee should be allowed to continue occupying the land as lessee.

x x x x x x x x

It has been settled in a number of cases that the right of a lessee to occupy the land leased as against the demand of the lessor should be decided under Rule 70 (formerly Rule 72) of the Rules of Court.

There is no merit in the contention that the lessee's supposed right to renewal of the lease contract can not be decided in the ejectment suit. x x x "if the plaintiff has any right to the extension of the lease at all, such right is a proper and legitimate issue that could be raised in the unlawful detainer case because it may be used as a defense to the action." In other words, the matter raised in the Court of First Instance of Cavite may be threshed out in the ejectment suit, in consonance with the principle prohibiting multiplicity of suits. And the

mere fact that the unlawful detainer-ejectment case was filed later, would not change the situation to depart from the application of the foregoing ruling." (Italics ours)

The above ruling was quoted from an earlier decision of the Court, *Pardo De Tavera v. Encarnacion*, [26] which cited the earlier case of *Teodoro, Jr. v. Mirasol*. [27] Accordingly, the more appropriate suit in which the controversy between the parties should be determined is the unlawful detainer case before the MeTC. The latter court has exclusive original jurisdiction over the subject matter and could grant appropriate relief even if the same would entail compelling the plaintiff to recognize an implied lease agreement. The fact that respondent prayed for an order to compel petitioner to execute a formal contract of lease would not operate to divest the MeTC of its jurisdiction to hear and decide the main issue, which pertains to material or de facto possession.

The fact that the unlawful detainer suit was filed later is no bar to the dismissal of the action for specific performance. Where there are two pending cases, the general rule is that the second case filed should be dismissed under the maxim *qui prior est tempore, potior est jure*. However, the rule is not a hard and fast one, as the "priority-in-time rule" may give way to the criterion of "more appropriate action." [28]

It has likewise been held that 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. [29]

It appears that at the time of the filing of the RTC case, petitioner had communicated to respondent that it filed an ejectment against it for violation of the original lease agreement. Thus, the RTC case, while purportedly one for specific performance, is in reality a preemptive maneuver intended to block the complaint for ejectment, considering that it was brought merely three days after respondent received the communication from petitioner. The latter was correct in pointing out that the RTC case was instituted in anticipation of its forthcoming move to eject respondent from the property. It was filed to bind petitioner's hands, so to speak, and to lay the ground for dismissal of any subsequent action that the latter may take pursuant to the notice of eviction.

Finally, it appears that on April 29, 2002, the MeTC rendered a decision in favor of respondent in the unlawful detainer case. [30] Among others, the court held that the issue to be resolved "does not appear to be one of material or physical possession", but that the same refers to the exercise of an option to renew the lease contract. It thus ruled that it had no jurisdiction over the case as "the question posited is one incapable of pecuniary estimation."

WHEREFORE, the instant petition is GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 66999 is hereby REVERSED and SET ASIDE. Civil Case No. 68213 pending before Branch 266 of the Regional Trial Court of Pasig City is ordered DISMISSED on the ground of *litis pendentia*.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio and Azcuna, JJ., concur.

[1] Rollo, pp. 122-124.

[2] Id. at 165-168.

[3] Id. at 170.

[4] CA Rollo, p. 100.

[5] Id. at 103.

[6] Id. at 101-102.

[7] Id. at 105.

[8] Id. at 106.

[9] Id. at 84-93.

[10] Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

[11] SEC. 4. Verification.- Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief", or lacks a proper verification, shall be treated as an unsigned pleading. (As amended by A. M. No. 00-2-10, May 1, 2000)

[12] SEC. 5. Certification against forum shopping.- The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause of the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[13] Supra, note 4 at 157-162.

[14] Supra, note 1 at 115.

[15] Supra, note 4 at 173-183.

[16] Supra, note 1 at 118.

[17] Id. at 121.

[18] Id. at 45-70.

[19] Id. at 72.

[20] Id. at 21.

[21] 99 Phil. 150 (1956).

[22] National Power Corporation v. CA & Cagayan Electric Power & Light Co., Inc. (CEPALCO), 345 Phil 9, 25 (1997), citing Victronics Computers, Inc. v. RTC Branch 63, Makati, G.R. No. 104019, 25 January 1993, 217 SCRA 517.

[23] Supra, note 1 at 163.

[24] G.R. No. L-38251, 31 January 1985, 134 SCRA 308, 314, citing Matela v. Chua Tay 115 Phil. 147 (1962) and cases cited therein.

[25] G.R. No. 100424, 13 June 1994, 233 SCRA 86, 91.

[26] 130 Phil. 635 (1968).

[27] Supra, note 22.

[28] Supra, note 23 at 25-26.

[29] Cruz, Nicio & Coquilla v. CA & Spouses Lomotan, 369 Phil. 161, 170-171 (1999), citing Allied Banking Corporation v. CA, 328 Phil. 710 (1996).

[30] Supra, note 1 at 517-549.

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