

**DOTMATRIX TRADING AS REPRESENTED BY ITS PROPRIETORS,
NAMELY ROMY YAP CHUA, RENATO ROLLAN AND ROLANDO D.
CADIZ, PETITIONER, VS. ROMMEL B. LEGASPI UNDER THE NAME
AND STYLE OF BIG ...**

G.R. No. 155622. October 26, 2009

Ponente: BRION, J.

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BRION, J.:

On a pure question of law involving the issue of *litis pendentia*, Dotmatrix Trading - represented by its proprietors, Romy Yap Chua, Renato Rollan and Rolando D. Cadiz (petitioners) - came directly to this Court via a petition for review on certiorari[1] to challenge the Orders[2] dated September 2, 2002 and October 4, 2002 of the Regional Trial Court (RTC)[3] in the case in caption.

FACTUAL BACKGROUND

The facts of the case, as gathered from the parties' pleadings, are briefly summarized below:

The petitioners are engaged in the business of buying and selling of commodities, including day-old chicks. Rommel B. Legaspi (respondent), as the proprietor of Big J Farms and RBL Farm, was the petitioners' supplier of day-old chicks from September to December 2001.

Sometime in May 2002, the respondent sent a demand letter to the petitioners for the payment of delivered day-old chicks. The petitioners, thru petitioner Cadiz, replied that they have paid P1,360,000.00, but the respondent was able to deliver only P1,136,150.00 worth of day-old chicks, leaving a deficiency of P223,850.00 worth of day-old chicks. The petitioners demanded the delivery of the deficiency, or the return of the overpayment made. When the parties refused to comply with each other's demands, both went to court for judicial relief.

On June 11, 2002, the petitioners (the buyers of the chicks) filed before RTC-Tarlac a complaint for sum of money and damages against the respondent, docketed as Civil Case No. 9354. The petitioners sought the return of the overpayment made, plus moral and exemplary damages, and attorney's fees.

On June 19, 2002, the respondent (the seller of the chicks) filed before RTC-Malolos, Bulacan a complaint for sum of money and damages against the petitioners, docketed as Civil Case No. 489-M-2002. The respondent alleged that he delivered P1,368,100.00 worth of day-old chicks, but the petitioners only paid P1,150,000.00. Thus, the respondent prayed for the payment of the balance of P218,100.00.

Shortly upon receipt of the summons and complaint in Civil Case No. 9354, or on August 21, 2002, the respondent filed a motion to dismiss Civil Case No. 9354 before RTC-Tarlac. He argued that Civil Case No. 9354 should be dismissed on the ground of *litis pendentia* because it is merely anticipatory and defensive of the respondent's claim for collection in Civil Case No. 489-M-2002 before RTC-Malolos.

THE RTC RULING

On September 2, 2002, RTC-Tarlac issued an Order[4] in Civil Case No. 9354 granting the respondent's motion and dismissing the complaint on the ground of *litis pendentia*. It noted that the petitioners filed Civil Case No. 9354 to preempt the respondent's collection case in Civil Case No. 489-M-2002 before RTC-Malolos. It found that the petitioners filed Civil Case No. 9354 only after they received a demand letter from the respondent.

The petitioners moved but failed to secure a reconsideration of the RTC order[5] and, from thence, came to us through the present petition on a pure question of law.

THE PETITION and THE PARTIES' SUBMISSIONS

The petitioners argue that Civil Case No. 9354 should not have been dismissed on the ground of *litis pendentia* because it was filed ahead of Civil Case No. 489-M-2002. They insist that Civil Case No. 9354 was filed to vindicate the wrong done to them by the respondent, and not to simply preempt the latter's case for collection of sum of money. They stress that it is their right to seek the assistance of the court to rectify the damage they sustained.

The respondent, on the other hand, submits that the issue raised by the petitioners is far from novel; the consistent judicial holding is that *litis pendentia* does not specifically require that the action that should yield to the other should be the prior pending action.

THE ISSUE

The core issue is whether Civil Case No. 9354 (the buyers' action for overpayment) - filed ahead of Civil Case No. 489-M-2002 (the seller's action for collection of balance) - should be dismissed on the ground of *litis pendentia*.

OUR RULING

We see no merit in the petition.

The elements of *Litis Pendentia* are present.

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. [6] As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. [7] It is based on the policy against multiplicity of suits. [8]

To constitute *litis pendentia*, not only must the parties in the two actions be the same; there must as well be substantial identity in the causes of action and in the reliefs sought. Further, the identity should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other. [9]

From every conceivable angle, no dispute exists that all the requisites of *litis pendentia* are present in this case. The parties in Civil Case No. 9354 and Civil Case No. 489-M-2002 are the same. They are suing each other for sums of money which arose from their supply contract of day-old chicks. The reliefs prayed for are based on the same facts and identity exists on the rights asserted. Any judgment rendered in one case would necessarily amount to *res judicata* in the other.

Guidelines for the dismissal of a complaint on the ground of *litis pendentia*

We take this opportunity to revisit the cases we have decided on the issue of *litis pendentia* and the factors we considered in determining which case should prevail and which must yield to the other.

The rule on *litis pendentia* does not require that the case later in time should yield to the earlier case; what is required merely is that there be another pending action, not a prior pending action.[10] Neither is it required that the party be served with summons before *lis pendens* can apply; it is the filing of the action, not the receipt of summons, which determines priority in date.[11]

Early on, we applied the principle of *Qui prior est tempore, potior est jure*[12] (literally, he who is before in time is better in right) in dismissing a case on the ground of *litis pendentia*. This was exemplified in the relatively early case of *Del Rosario v. Jacinto*[13] where two complaints for reconveyance and/or recovery of the same parcel of land were filed by substantially the same parties, with the second case only impleading more party-plaintiffs. The Court held that "parties who base their contention upon the same rights as the litigants in a previous suit are bound by the judgment in the latter case." Without expressly saying so in *litis pendentia* terms, the Court gave priority to the suit filed earlier.

In *Pampanga Bus Company, Inc. v. Ocfemia*,[14] complaints for damages arising from a collision of a cargo truck and a bus were separately filed by the owners of the colliding vehicles. The complaint of the owners of the cargo truck prevailed and the complaint of the owners of the bus had to yield, as the cargo truck owners first filed their complaint. Notably, the first and prevailing case was far advanced in development, with an answer with counterclaim and an answer to the counterclaim having been already filed, thus fully joining the issues.

In *Lamis Ents. v. Lagamon*,[15] the first case was a complaint for specific performance of obligations under a Memorandum of Agreement, while the second case was a complaint for sums of money arising from obligations under a promissory note and a chattel mortgage, and damages. We dismissed the second case because the claims for sums of money therein arose from the Memorandum of Agreement sued upon in the first case.

Ago Timber Corporation v. Ruiz[16] offered an insightful reason after both parties had each pleaded the pendency of another action between the same parties for the same cause. The Court ruled that the second action should be dismissed, "not only as a matter of comity with a coordinate and co-equal court (*Laureta & Nollado, Commentaries & Jurisprudence on Injunction*, p. 79, citing *Harrison v. Littlefield*, 57 Tex. Div. A. 617, 619, 124 SW 212), but also to prevent confusion that might seriously hinder the administration of justice. (*Cabigao, et al. v. Del Rosario, et al.*, 44 Phil. 182)."

In all these cases, we gave preference to the first action filed to be retained. The "priority-in-time rule," however, is not absolute.

In the 1956 case of *Teodoro v. Mirasol*,[17] we deviated from the "priority-in-time rule" and applied the "more appropriate action test" and the "anticipatory test."

The "more appropriate action test" considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled. In *Teodoro*, the lessee filed an action for declaratory relief to fix the period of the lease, but the lessor moved for its dismissal because he had subsequently filed an action for ejectment against the lessee. We noted that the unlawful detainer suit was the more appropriate action to resolve the real issue between the parties - whether or not the lessee should be allowed to continue occupying the land under the terms of the lease contract; this was the

subject matter of the second suit for unlawful detainer, and was also the main or principal purpose of the first suit for declaratory relief.

In the "anticipatory test," the bona fides or good faith of the parties is the critical element. If the first suit is filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed. In *Teodoro*, we noted that the first action, declaratory relief, was filed by the lessee to anticipate the filing of the second action, unlawful detainer, considering the lessor's letter informing the lessee that the lease contract had expired.

We also applied the "more appropriate action test" in *Ramos v. Peralta*.^[18] In this case, the lessee filed an action for consignment of lease rentals against the new owner of the property, but the new owner moved to dismiss the consignment case because of the quieting of title case he had also filed against the lessee. Finding that the real issue between the parties involved the right to occupy/possess the subject property, we ordered the dismissal of the consignment case, noting that the quieting of title case is the more appropriate vehicle for the ventilation of the issues between them; the consignment case raised the issue of the right to possession of the lessee under the lease contract, an issue that was effectively covered by the quieting of title case which raised the issue of the validity and effectivity of the same lease contract.

In *University Physician Services, Inc. v. Court of Appeals*,^[19] we applied both the "more appropriate action test" and "anticipatory test." In this case, the new owner of an apartment sent a demand letter to the lessee to vacate the leased apartment unit. When the lessee filed an action for damages and injunction against the new owner, the new owner moved for the dismissal of the action for damages on account of the action for ejectment it had also filed. We noted that ejectment suit is the more appropriate action to resolve the issue of whether the lessee had the right to occupy the apartment unit, where the question of possession is likewise the primary issue for resolution. We also noted that the lessee, after her unjustified refusal to vacate the premises, was aware that an ejectment case against her was forthcoming; the lessee's filing of the complaint for damages and injunction was but a canny and preemptive maneuver intended to block the new owner's action for ejectment.

We also applied the "more appropriate action test" in the 2003 case *Panganiban v. Pilipinas Shell Petroleum Corp.*,^[20] where the lessee filed a petition for declaratory relief on the issue of renewal of the lease of a gasoline service station, while the lessor filed an unlawful detainer case against the lessee. On the question of which action should be dismissed, we noted that the interpretation of a provision in the lease contract as to when the lease would expire is the key issue that would determine the lessee's right to possess the gasoline service station. The primary issue - the physical possession of the gasoline station - is best settled in the ejectment suit that directly confronted the physical possession issue, and not in any other case such as an action for declaratory relief.^[21]

A more recent case - *Abines v. Bank of the Philippine Islands*^[22] in 2006 - saw the application of both the "priority-in-time rule" and the "more appropriate action test." In this case, the respondent filed a complaint for collection of sum of money against the petitioners to enforce its rights under the promissory notes and real estate mortgages, while the petitioners subsequently filed a complaint for reformation of the promissory notes and real estate mortgages. We held that the first case, the collection case, should subsist because it is the first action filed and the more appropriate vehicle for litigating all the issues in the controversy. We noted that in the second case, the reformation case, the petitioners acknowledged their indebtedness to the respondent; they merely contested the amounts of the principal, interest and the remaining balance. We observed, too, that the petitioners' claims in the reformation case were in the nature of defenses to the collection case and should be asserted in this latter case.

Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (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 later 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.[23]

Civil Case No. 489-M-2002 is the appropriate case to determine the rights of the parties

In the present case, the undisputed facts show that the respondent initiated the preparatory moves that led to the present litigation when he sent the petitioners - in May 2002, or about five (5) months after the end of their supply contract - a demand letter for the payment of delivered day-old chicks. The petitioners only reacted to this demand when they replied that there was in fact an overpayment that should be refunded. Under these facts, and given the law on sales that business is keenly aware of, we can safely conclude that the petitioners knew that a case for sum of money would be filed against them and thus filed Civil Case No. 9354 in anticipation of this coming case which became Civil Case No. 489-M-2002; the purpose, under this view, is purely preemptive, i.e., to seek the dismissal of the coming action.

The more compelling reason that strikes us, however, is that Civil Case No. 489-M-2002 is the more appropriate action to rule on the real issue between the parties - whether or not the correct payment had been made on the delivered day-old chicks; the petitioners' claim of overpayment in Civil Case No. 9354 is more in the nature of a defense to the respondent's action for collection in Civil Case No. 489-M-2002. From this perspective, the real issue is better asserted in Civil Case No. 489-M-2002 - the collection case - rather than in the action that merely serves as a defense to the collection case.

Another and equally compelling reason why Civil Case No. 489-M-2002 should prevail is the reason we put forward in *Pampanga Bus Company, Inc. v. Ocfemia*[24] - the stage of this case at this point. With the seven-year pendency of the present case (since the filing of Civil Case No. 9354 on June 11, 2002) and with no restraining order from this Court, there is no doubt that trial on the merits has already been conducted in Civil Case No. 489-M-2002, with the petitioners given the full opportunity to present evidence on their defense. To dismiss Civil Case No. 489-M-2002 at this point would result in needless delay in the resolution of the parties' dispute and bring them back to square one. This consequence will defeat the public policy reasons behind *litis pendentia* which, like the rule on forum shopping, aims to prevent the unnecessary burdening of our courts and undue taxing of the manpower and financial resources of the judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.[25]

WHEREFORE, premises considered, we hereby DENY the petition for its failure to show any reversible error in the assailed Orders dated September 2, 2002 and October 4, 2002 of the Regional Trial Court, Branch 63, Tarlac, Tarlac in Civil Case No. 9354.

SO ORDERED.

Quisumbing, (Chairperson), Carpio[*], Carpio Morales, and Abad, JJ., concur.

[*] Designated additional Member of the Second Division effective October 19 to 28, 2009 per Special Order No. 757 dated October 12, 2009.

[1] Under Rule 45 of the Rules of Court.

- [2] Penned by Judge Arsenio P. Adriano; rollo, pp. 8-10.
- [3] Branch 63, Tarlac, Tarlac.
- [4] Rollo, p. 8.
- [5] Id., pp. 9-10.
- [6] *City of Makati v. Municipality (now City) of Taguig, Metropolitan Manila*, G.R. No. 163175, June 27, 2008, 556 SCRA 218, 227; *Agilent Technologies Singapore (Pte.) Ltd. v. Integrated Silicon Technology Philippines Corporation*, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 601; *Feliciano v. Court of Appeals*, G.R. No. 123293, March 5, 1998, 287 SCRA 61, 66.
- [7] *Proton Pilipinas Corporation v. Republic*, G.R. No. 165027, October 16, 2006, 504 SCRA 528, 545; *Guaranteed Hotels Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 744.
- [8] *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393; *Calo v. Tan*, G.R. No. 151266, November 29, 2005, 476 SCRA 426, 440.
- [9] See *Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission*, G.R. No. 159323, July 31, 2008, 560 SCRA 719, 736; *Dayot v. Shell Chemical Company (Phils.), Inc.*, G.R. No. 156542, June 26, 2007, 525 SCRA 535, 545-546; *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 429.
- [10] *Andresons Group, Inc. v. Court of Appeals*, G.R. No. 114928, January 21, 1997, 266 SCRA 423, 427; *Ramos v. Peralta*, G.R. No. 45107, November 11, 1991, 203 SCRA 412, 419; *Teodoro v. Mirasol*, 99 Phil. 150 (1956).
- [11] See *Pampanga Bus Co., Inc. v. Ocfemia*, No. L-21793, October 20, 1966, 18 SCRA 407, reiterated in *Salacup v. Maddela, Jr.*, G.R. No. L-50471, June 29, 1979, 91 SCRA 275, 279 and *Andresons Group, Inc. v. Court of Appeals*, supra note 10.
- [12] Priority in time gives preference in law, *Black's Law Dictionary* (Fifth ed.), 1125.
- [13] No. L-20340, September 10, 1965, 15 SCRA 15.
- [14] Supra note 11.
- [15] No. L-57250, October 30, 1981, 108 SCRA 740.
- [16] G.R. No. L-23887, December 26, 1967, 21 SCRA 1381.
- [17] 99 Phil. 150 (1956).
- [18] G.R. No. 45107, November 11, 1991, 203 SCRA 412.
- [19] G.R. No. 100424, June 13, 1994, 233 SCRA 86.
- [20] G.R. No. 131471, January 22, 2003, 395 SCRA 624.
- [21] *Mid-Pasig Land Development v. Court of Appeals*, G.R. No. 153751, October 8, 2003, 413 SCRA 204.
- [22] G.R. No. 167900, February 13, 2006, 482 SCRA 421.
- [23] *Mid-Pasig Land Development Corporation v. Court of Appeals*, supra note 21, p. 213; *Panganiban v. Pilipinas Shell Petroleum Corp.*, supra note 20, p. 634; *Compania General de Tabacos de Filipinas v. Court of Appeals*, G.R. Nos. 130326 & 137868, November 29, 2001, 371 SCRA 95, 114-115; *Allied Banking Corp. v.*

Court of Appeals, G.R. No. 95223, July 26, 1996, 259 SCRA 371, 378.

[24] Supra note 14.

[25] Abines v. Bank of the Philippine Islands, supra note 9, pp. 433-434.

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