

FREDERICK DAEL, Petitioner, vs. SPOUSES BENEDICTO and VILMA BELTRAN, Respondents.*G.R. No. 156470. April 30, 2008*

Ponente: QUISUMBING, J.

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Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure raising pure questions of law, and seeking a reversal of the Resolution[1] dated May 28, 2002 of the Regional Trial Court (RTC), Branch 34, Negros Oriental, Dumaguete City, in Civil Case No. 13072, which dismissed with prejudice, petitioner's complaint for breach of contract and damages against the respondents. Also assailed is the trial court's Resolution[2] dated December 5, 2002, denying petitioner's motion for reconsideration.

The facts are as follows:

On November 23, 2001, petitioner Frederick Dael filed before the RTC, Branch 34, Negros Oriental, a Complaint[3] for breach of contract and damages against respondent-spouses Benedicto and Vilma Beltran. In his complaint, petitioner alleged that respondents sold him a parcel of land covering three hectares located at Palayuhan, Siaton, Negros Oriental. Petitioner alleged that respondents did not disclose that the land was previously mortgaged. Petitioner further alleged that it was only on August 6, 2001 when he discovered that an extrajudicial foreclosure over the property had already been instituted, and that he was constrained to bid in the extrajudicial sale of the land conducted on August 29, 2001. Possession and ownership of the property was delivered to him when he paid the bid price of P775,100. Petitioner argued that respondents' non-disclosure of the extrajudicial foreclosure constituted breach of contract on the implied warranties in a sale of property as provided under Article 1547[4] of the New Civil Code. He likewise claimed that he was entitled to damages because he had to pay for the property twice.

On January 10, 2002, respondents filed a Motion to Dismiss[5] on the ground that petitioner had no cause of action since the contract to sell stated that the vendor was Benedicto Beltran and the vendee was Frederick George Ghent Dael, not the petitioner.

On February 12, 2002, in a hearing on the motion, Atty. Dirkie Y. Palma, petitioner's counsel, disclosed that petitioner is the father of Frederick George Ghent Dael whose name appears as the contracting party in the Contract to Sell dated July 28, 2000. Atty. Palma moved to reset the hearing to enable the petitioner to withdraw and have the complaint dismissed, amended, or to enter into a compromise agreement with respondents.

The RTC on the same day ordered petitioner to clarify whether or not he and Frederick George Ghent Dael were one and the same person; whether or not they were Filipinos and residents of Dumaguete City; and whether or not Frederick George Ghent Dael was of legal age, and married, as stated in the Contract to Sell.[6] Petitioner did not comply. Instead, he filed a Notice of Dismissal on February 20, 2002. The Notice of Dismissal states:

Plaintiff, through counsel, unto this Honorable Court, respectfully files this notice of dismissal of the

above-captioned case without prejudice by virtue of Rule 17, Section 1 of the 1997 Rules of Civil Procedure. By this notice, defendants['] Motion to Dismiss is then rendered moot and academic.

WHEREFORE, plaintiff Frederick Dael respectfully prays that this Honorable Court dismiss the above-captioned case without prejudice.

RESPECTFULLY SUBMITTED [7]

On May 28, 2002, the RTC dismissed the complaint with prejudice. The dispositive portion of the Resolution reads thus:

WHEREFORE, finding merit to defendants' contention that plaintiff Frederick Dael has no cause of action against them since said plaintiff is not one of the contracting parties in the Contract to Sell, which is allegedly breached, the Motion to Dismiss filed by defendants is granted. Consequently, the case at bar is DISMISSED, with prejudice.

SO ORDERED.[8] [Emphasis supplied.]

Arguing that the RTC erred in dismissing the complaint with prejudice based on respondents' Motion to Dismiss, and not without prejudice based on his Notice of Dismissal, petitioner filed a Motion for Reconsideration[9[]] but it was denied by the RTC in a Resolution dated December 5, 2002.

Hence, this petition.

Petitioner raises the following issues for our resolution:

I.

WHETHER [OR] NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR BREACH OF CONTRACT AND DAMAGES BASED ON THE MOTION TO DISMISS FILED BY HEREIN RESPONDENTS AND NOT ON THE NOTICE OF DISMISSAL PROMPTLY [FILED] BY HEREIN PETITIONER BEFORE RESPONDENTS COULD FILE A RESPONSIVE PLEADING, UNDER RULE 17, SECTION 1 OF THE 1997 RULES O[F] CIVIL PROCEDURE.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR BREACH OF CONTRACT AND DAMAGES WITH PREJUDICE. [10]

On the other hand, respondents raise the following issues:

I.

WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE ACTION FOR BREACH OF CONTRACT AND DAMAGES ON THE BASIS OF THE MOTION TO DISMISS FILED BY THE DEFENDANT AND NOT ON THE BASIS OF THE NOTICE OF DISMISSAL FILED BY THE PLAINTIFF.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT IS CORRECT IN DISMISSING THE CASE WITH PREJUDICE.

III.

WHETHER OR NOT PETITIONER'S RECOURSE UNTO THIS HONORABLE COURT BY WAY OF PETITION FOR REVIEW ON CERTIORARI IS PROPER.[11]

Essentially, the issues are (1) Did the RTC err in dismissing the complaint with prejudice? and (2) Was petitioner's recourse to this Court by way of a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure proper?

Petitioner, citing *Serrano v. Cabrera and Makabulo*[12] in his Memorandum,[13] argues that the 1997 Rules of Civil Procedure expressly states that before the defendant has served his answer or moved for a summary judgment, he has, as a matter of right, the prerogative to cause the dismissal of a civil action filed, and such dismissal may be effected by a mere notice of dismissal. He further argues that such dismissal is without prejudice, except (a) where the notice of dismissal so provides; (b) where the plaintiff has previously dismissed the same case in a court of competent jurisdiction; or (c) where the dismissal is premised on payment by the defendant of the claim involved. He asserts it is the prerogative of the plaintiff to indicate if the Notice of Dismissal filed is with or without prejudice and the RTC cannot exercise its own discretion and dismiss the case with prejudice.

On the other hand, respondents in their Memorandum,[14] counter that the RTC is correct in dismissing the case with prejudice based on their Motion to Dismiss because they filed their motion on January 10, 2002, ahead of petitioner who filed his Notice of Dismissal only on February 20, 2002. They further argue that although it is correct that under the 1997 Rules of Civil Procedure a complaint may be dismissed by the plaintiff by filing a notice of dismissal before service of the answer or of a motion for summary judgment, the petitioner filed the Notice of Dismissal only as an afterthought after he realized that the Motion to Dismiss was meritorious.

Further, they point out that petitioner deceived the court when he filed the action knowing fully well that he was not the real party-in-interest representing himself as Frederick George Ghent Dael.

Respondents also argue that petitioner's recourse to this Court by way of a petition for review on certiorari was not proper since the proper remedy should have been to file an appeal of the order granting the Motion to Dismiss. He contends that the petitioner should have appealed to the Court of Appeals under Rule 41[15] instead of assailing the ruling of the RTC by way of a petition for review on certiorari before the Supreme Court.

As to the propriety of dismissal of the complaint with prejudice, Section 1, Rule 17 of the 1997 Rules of Civil Procedure provides:

SECTION 1. Dismissal upon notice by plaintiff. - A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. [Emphasis supplied.]

Under this provision, it is mandatory that the trial court issue an order confirming such dismissal and, unless otherwise stated in the notice, the dismissal is without prejudice and could be accomplished by the plaintiff through mere notice of dismissal, and not through motion subject to approval by the court. Dismissal is ipso facto upon notice, and without prejudice unless otherwise stated in the notice. [16] The trial court has no choice but to consider the complaint as dismissed, since the plaintiff may opt for such dismissal as a matter of right, regardless of the ground. [17]

Respondents argue that the Motion to Dismiss they filed precedes the Notice of Dismissal filed by petitioner and hence, the trial court correctly gave it precedence and ruled based on the motion.

This argument is erroneous. Section 1 of Rule 17 does not encompass a Motion to Dismiss. The provision

specifically provides that a plaintiff may file a notice of dismissal before service of the or a motion for answer summary judgment. Thus, upon the filing of the Notice of Dismissal by the plaintiff, the Motion to Dismiss filed by respondents became moot and academic and the trial court should have dismissed the case without prejudice based on the Notice of Dismissal filed by the petitioner.

Moreover, to allow the case to be dismissed with prejudice would erroneously result in res judicata [18] and imply that petitioner can no longer file a case against respondents without giving him a chance to present evidence to prove otherwise.

As to the second issue, petitioner's recourse to this Court by way of a petition for review on certiorari under Rule 45 is proper. An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings were terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff is to appeal the order. [19] Under the Rules of Court, a party may directly appeal to the Supreme Court from a decision of the trial court only on pure questions of law. [20]

WHEREFORE, the petition is GRANTED. The assailed Resolutions dated May 28, 2002 and December 5, 2002 of the Regional Trial Court, Branch 34, Negros Oriental are AFFIRMED with MODIFICATION such that the case is dismissed without prejudice. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, pp. 50-52. Penned by Judge Rosendo B. Bandal, Jr.

[2] Id. at 77-79.

[3] Id. at 2-9.

[4] Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest.

[5] Records, pp. 32-37.

[6] Id. at 42-43, 126-128.

[7] Id. at 44.

[8] Id. at 52.

[9] Rollo, pp. 65-74.

[10] Id. at 148.

[11] Id. at 163-164.

[12] 93 Phil. 774 (1953).

[13] Rollo, pp. 143-157.

[14] Id. at 162-168.

[15] APPEAL FROM THE REGIONAL TRIAL COURTS.

[16] O.B. Jovenir Construction and Development Corporation v. Macamir Realty and Development Corporation, G.R. No. 135803, March 28, 2006, 485 SCRA 446, 453.

[17] Id. at 454.

[18] Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." Res judicata lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

The elements of res judicata are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second actions, identity of parties, subject matter, and causes of action. (Republic v. Yu, G.R. No. 157557, March 10, 2006, 484 SCRA 416, 420-421.)

[19] Madrigal Transport, Inc. v. Lapanday Holdings Corporation, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 138.

[20] Cebu Woman's Club v. De la Victoria, G.R. No. 120060, March 9, 2000, 327 SCRA 533, 537.

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