

ISIDRO PEREZ AND NARCISO A. RAGUA, PETITIONERS, VS. HON. COURT OF APPEALS, HON. VIVENCIO S. BACLIG AND SPOUSES GAUDENCIO DIGOS, JR. AND RHODORA DIGOS, RESPONDENTS.

G.R. No. 157616. July 22, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The spouses Gaudencio Digos, Jr. and Rhodora Digos secured a loan of P5,800,000.00 from the International Exchange Bank in December 1996, to finance their project for the construction of townhouses on their property covered by Transfer Certificate of Title (TCT) No. 168790 located in Tandang Sora, Quezon City. To secure the payment of the loan, the spouses Digos executed a Real Estate Mortgage over the said property. However, the completion of their project was delayed, partly because some homeowners in the Pillarville Subdivision (which abutted the subject property) refused to allow them to build an access road through the subdivision to the property. Thus, the equipment to be used for the project could not pass through the Pillarville Subdivision.

Because of the spouses Digos' failure to pay the amortizations on their loan, the bank caused the extrajudicial foreclosure of their real estate mortgage. Consequently, the property was sold at public auction, with the bank as the highest bidder at P4,500,000.00, which appeared to be the account of the spouses Digos at the time. The Certificate of Sale executed by the sheriff was, thereafter, registered at the Office of the Register of Deeds on September 7, 1998.[1]

In the meantime, the spouses Digos referred the matter of the right of way to the barangay captain for settlement. Due to the vehement objections of some Pillarville Subdivision homeowners, the barangay captain failed to resolve the matter.[2]

On July 2, 1999, the spouses Digos wrote the bank, requesting for a period of six (6) months from September 7, 1999 within which to redeem the property.[3] However, the bank denied the request. On August 3, 1999, the spouses again wrote to the bank, pleading for an extension of at least three (3) months to redeem the property.[4] In a Letter[5] to the spouses dated August 30, 1999, the bank granted the spouses Digos a period of one month from September 8, 1999 (or until October 8, 1999) within which to redeem the property. However, the bank consolidated its title over the property, and on September 19, 1999, the Register of Deeds issued TCT No. 206979 in the name of the bank.

Instead of repurchasing the property on or before October 8, 1999, the spouses Digos filed a Complaint[6] against the bank on October 7, 1999 with the Regional Trial Court (RTC) of Quezon City, for the nullification of the extrajudicial foreclosure of the real estate mortgage and sale at public auction and/or redemption of the property, with a prayer for a temporary restraining order and a writ of preliminary injunction to enjoin the bank from consolidating its title over the property. The spouses Digos also sought judgment for damages.

In their complaint, the spouses Digos alleged, inter alia, that they were denied their right to due process because the foreclosure of the real estate mortgage was extrajudicial; the sale of their property at public auction was

without prior notice to them; the property was sold for only P4,500,000.00, the balance of their account with the bank, but about 400% lower than the prevailing price of the property; the bank rejected their plea for a five-month extension to redeem, and their offer of P1,000,000.00 in partial payment of their loan account to reduce the same to P3,500,000.00, but the bank granted them an extension of only one month to redeem the property, designed to divest them of the same and enrich some characters at their expense; because of the foregoing acts of the bank, they suffered sleepless nights, nervous tension and the rise in their blood pressure for which they were entitled to moral damages in the amount of P500,000.00, aside from the exemplary damages they were entitled to in the amount of P100,000.00.

The spouses Digos prayed for a temporary restraining order to enjoin the bank from consolidating its title over the property, and that judgment be rendered in their favor, thus:

...

- Ordering the defendant Bank to allow plaintiffs to redeem their property;
- Making the writ of injunction permanent;
- Ordering the defendant Bank to pay moral damages of P500,000.00;
- Ordering defendant Bank to pay exemplary damages of P200,000.00;
- Ordering defendant Bank to pay attorney's fee of P30,000.00 plus P2,000.00 for every appearance in Court;

Plaintiffs further pray for such other reliefs and remedies available within the premises.[7]

The case (first complaint, for brevity) was docketed as Civil Case No. Q-99-38941. The spouses Digos caused the annotation of a notice of lis pendens at the dorsal portion of TCT No. 206979. The trial court, however, did not issue a temporary restraining order or writ of preliminary injunction.

Meanwhile, the bank filed a motion to dismiss the complaint and for the cancellation of the notice of lis pendens on the following grounds:

- The action for injunction has already been rendered moot and academic, title to the foreclosed property having been consolidated in iBank's name;
- Assuming arguendo that title to the foreclosed property has not yet been consolidated, still plaintiffs have no cause of action for injunction against iBank.[8]

The spouses Digos opposed the motion. The bank filed a reply, appending thereto a copy of TCT No. 206979 in its name.

In an Order dated December 9, 1999, the trial court granted the motion and dismissed the complaint. It found that the spouses Digos admitted in their complaint that the period for the redemption of the property was about to expire, and that they were given up to October 8, 1999 within which to do so. The court held that it had no authority to extend the period for redemption, and since it had already expired, the spouses had no more right to redeem the property; as such, the defendant had the right to consolidate its title over the property, and had, in fact, been issued TCT No. 206979. The court also declared that the spouses Digos had no right to demand that they be allowed to redeem the property.

Finally, since the act sought to be enjoined - the consolidation of the bank's title - was already fait accompli, the spouses Digos had no cause of action for injunction.[9] The trial court ruled that a writ of injunction cannot issue to enjoin a consummated act.[10] It, thus, ordered the cancellation of the notice of lis pendens annotated at the

dorsal portion of TCT No. 206979.

The spouses Digos failed to appeal the order; instead, they filed a petition for certiorari with the Court of Appeals (CA), assailing the Order of the RTC. The CA dismissed the petition because it was filed out of time. The petitioners then filed a motion for reconsideration thereof, which they later withdrew via a motion. The CA then resolved to grant the motion; hence, the CA resolution dismissing the petition became final and executory on May 7, 2001. Entry of judgment was made of record.[11]

Meanwhile, the bank sold the property to Isidro Perez and Narciso Ragua to whom the Register of Deeds issued TCT No. 211888. The vendees caused the subdivision of the property into eighteen (18) lots. The Register of Deeds issued titles for each subdivision lot in favor of Perez and Ragua.[12]

On June 4, 2001, the spouses Digos filed a Complaint[13] with the RTC of Quezon City, this time, against the bank, Perez and Ragua, for the cancellation and annulment of the extrajudicial foreclosure of the real estate mortgage executed by them in favor of the bank, the sale at public auction as well as the certificate of sale executed by the sheriff, and the Torrens title issued to them. The spouses Digos prayed for a writ of preliminary injunction and a temporary restraining order. The petitory portion of the complaint reads:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that immediately upon the filing of the instant complaint, a temporary restraining order be issued, and after hearing, a writ of preliminary injunction issue, enjoining defendants PEREZ and RAGUA from further disposing of the subject property.

Likewise, it is most respectfully prayed of this Honorable Court that, after due hearing, judgment be rendered ordering the CANCELLATION and ANNULMENT of the extrajudicial foreclosure of sale, the Sheriff's Certificate of Sale and the consolidated title under the name of defendant bank, as well as the transfer certificate/s of title issued or under the name of defendants iBANK, PEREZ and RAGUA;

Further, it is most respectfully prayed also that judgment be rendered ordering the defendants:

- to pay plaintiffs the amount of FIVE HUNDRED THOUSAND [PESOS] (P500,000.00), as and by way of actual expenses;
- to pay plaintiffs the amount of ONE MILLION AND FIVE HUNDRED THOUSAND PESOS (P1,500,000.00), as and by way of moral damages;
- to pay plaintiffs the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00), as and by way of exemplary damages;
- to pay plaintiffs the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00), as and by way of attorney's fees; and,
- to pay the expenses of litigation and costs of suit.

Plaintiffs further pray for other reliefs, just and equitable, under the circumstances.[14]

The spouses Digos reiterated the allegations in their complaint in Civil Case No. Q-99-38941 that they were not notified of the sale at public auction, and that the bank's P4,500,000.00 bid for the property was unconscionably low compared to the prevailing market price of P25,000,000.00. They also admitted their failure to pay their amortization on their loans. However, they alleged this time that the extrajudicial foreclosure of the real estate mortgage and the sale at public auction were illegal because the bank charged much more than the amount due on their loan account, to wit: interest of 26% per annum on the loan account covering January 2, 1998, whereas under the promissory note executed in favor of the bank, the new interest rate should commence only on March 4, 1993;

penalty charges of 26% of the account, and 5% penalty charges on top of the 26% interest per annum, as shown by the bank's statement of account. The spouses Digos also averred that although they pleaded for a restructuring of their loan account and a moratorium on the payment of their account, they were unaware of the erroneous computation of the balance of their loan account. They maintained that the bank's consolidation of its title over the property on September 19, 1999 was premature because they were given until October 8, 1999 to redeem the property.

The spouses Digos also alleged that as a consequence of the bank's acts, they incurred actual damages of P500,000.00, sustained moral damages of P1,500,000.00, and were entitled to exemplary damages for P100,000.00.[15]

The case was docketed as Civil Case No. Q-01-44227. The defendant bank filed a motion to dismiss the complaint on the following grounds:

- THE PLAINTIFFS HAVE NO CAUSE OF ACTION AGAINST DEFENDANTS, THEY BEING ESTOPPED FROM QUESTIONING THE REGULARITY OF THE EXTRAJUDICIAL FORECLOSURE SALE.

- PLAINTIFFS HAVE VIOLATED THE RULE AGAINST SPLITTING A SINGLE CAUSE OF ACTION UNDER SECTION 4, RULE 2 OF THE RULES OF COURT IN INSTITUTING THE INSTANT CASE.

- PLAINTIFFS ARE GUILTY OF FORUM SHOPPING.

- PLAINTIFFS ARE GUILTY OF FALSE CERTIFICATION AGAINST FORUM SHOPPING, IN VIOLATION OF SECTION 5, RULE 7 OF THE RULES OF COURT.[16]

The bank alleged that the spouses Digos admitted in their complaint that, after the extrajudicial foreclosure of the real estate mortgage and the sale of the property at public auction, they pleaded to redeem the property but failed to do so and were granted a one-month extension. The bank averred that, based on the said allegations, the spouses were estopped from assailing the extrajudicial foreclosure of the real estate mortgage, the sale at public auction and the Torrens title issued to it; hence, they had no cause of action. It further alleged that the spouses Digos already assailed the extrajudicial foreclosure of the real estate mortgage and the sale of the property at public auction on account of lack of due process and arbitrary abuse in their first complaint; they again sought to do so in this case, this time grounded on the invalid foreclosure of the real estate mortgage, and the sale at public auction of the property for an amount in excess of the balance of the loan account. The bank argued that, in so doing, the spouses Digos were guilty of splitting a single cause of action which is proscribed by Rule 2, Section 4 of the Rules of Court; they were, likewise, barred by *res judicata* from filing the second complaint for the same causes of action, even if additional defendants were impleaded. Consequently, the spouses Digos were also guilty of forum shopping.[17]

Perez and Ragua filed a motion to dismiss on similar grounds of *res judicata*, splitting of a single cause of action and forum shopping.[18]

On June 29, 2001, the trial court issued an Order[19] denying the motion, ruling that there was no identity of issue in the two actions because, in the second complaint (docketed as Civil Case No. Q-01-44227), the spouses Digos assailed the legality of the extrajudicial foreclosure, on the sole ground that the bank had unlawfully increased their obligation, contrary to the terms and conditions of the loan contract. The court held that the causes of action in the two complaints were not identical: in the first case, it was for the redemption of the mortgaged property, distinct and separate from their cause of action in the second case which is rooted on the erroneous computation of the balance of their loan account with the bank. The court also declared that in the first complaint, the spouses Digos assailed the validity or regularity of the extrajudicial foreclosure of the real estate mortgage and the sale at

public auction. Consequently, the court concluded, the complaint was not barred by *res judicata*; nor are they guilty of forum shopping.

The trial court denied the defendants' motion for reconsideration in its Order[20] dated December 6, 2001; hence, they filed a petition[21] for certiorari, prohibition and mandamus with the CA, alleging therein that the respondent judge committed a grave abuse of his discretion amounting to excess or lack of jurisdiction in denying their motion to dismiss the complaint.

On November 25, 2002, the CA rendered judgment dismissing the petition and affirming the assailed orders. The appellate court declared that there was no identity of causes of action in the two cases because the first action was one for injunction and redemption of the property, whereas the second action was for the nullification of the extrajudicial foreclosure of the real estate mortgage and the sale at public auction due to the erroneous computation of the balance on the respondents' account with the bank; hence, the spouses Digos were not estopped from filing their second action.[22] The petitioners filed a motion for a reconsideration of the said decision, which the appellate court denied.[23]

Petitioners Isidro Perez and Narciso Ragua forthwith filed the instant petition for review on certiorari, raising the following issues:

WHETHER OR NOT THE JUDGMENT IN CIVIL CASE NO. Q-99-[38941] (REDEMPTION OF MORTGAGE) IS RES JUDICATA TO CIVIL CASE NO. Q-01-44227 (CANCELLATION AND ANNULMENT OF FORECLOSURE SALE)?

WHETHER OR NOT THE PRIVATE RESPONDENTS ARE ALREADY ESTOPPED FROM ATTACKING THE VALIDITY OF THE FORECLOSURE SALE?[24]

It is the contention of the petitioners that the private respondents (the plaintiffs in both actions in the RTC) are guilty of splitting their cause of action. The petitioners point out that the private respondents failed to pray for the nullification of the extrajudicial foreclosure and sale at public auction in their first action, and did so only in their second complaint. For such failure, the second action was barred by *res judicata*, conformably with Section 4, Rule 2 of the Rules of Court. The petitioners point out that the issue of the computation of the respondents' balance on their loan account had already been passed upon and resolved by the court in the first case, and, as such, can no longer be assailed in the second case. The petitioners likewise maintain that the validity of the foreclosure of the real estate mortgage and sale at public auction was raised and resolved in the first case. The petitioners insist that the private respondents were barred from assailing the extrajudicial foreclosure of the real estate mortgage and the sale at public auction of the property in favor of the bank. They further point out that the private respondents repeatedly requested the bank for extensions to redeem the property; such requests were eventually granted but the private respondents still failed to redeem the property.

For their part, the private respondents aver that their action in the first case was for the grant of an extension to redeem the property and avert the bank's act of consolidating its title over the property, while their action in the second case was for the nullification of the extrajudicial foreclosure of the real estate mortgage and the sale of the property at public auction on account of the arbitrary, unlawful and baseless imposition of unconscionable re-priced interest rates on their loan account. They aver that there can be no conclusiveness of judgment in the first action because the issues in the two cases are not identical. They insist that the issues in the first case are not being relitigated in the second case; hence, their second action is not barred by *res judicata*, nor did they split their cause of action.

The Ruling of the Court

Splitting a single cause of action consists in dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions therein.[25] A single cause of action or entire claim or demand cannot be split up or divided so as to be made the subject of two or more different actions.[26]

A single act or omission may be violative of various rights at the same time, such as when the act constitutes a violation of separate and distinct legal obligations.[27] The violation of each of these rights is a cause of action in itself. However, if only one right may be violated by several acts or omissions, there would only be one cause of action. Otherwise stated, if two separate and distinct primary rights are violated by one and the same wrong; or if the single primary right should be violated by two distinct and separate legal wrongs; or when the two primary rights are each broken by a separate and distinct wrongs; in either case, two causes of action would result.[28] Causes of action which are distinct and independent, although arising out of the same contract, transaction or state of fact may be sued separately, recovery on one being no bar to subsequent actions on the others.

The mere fact that the same relief is sought in the subsequent action will not render the judgment in the prior action as *res judicata*. [29] Causes of action are not distinguishable for purposes of *res judicata* by difference in the claims for relief.[30]

Comparing the material averments of the two complaints, it would appear that separate primary rights of the respondents were violated by the bank's institution of a petition for extrajudicial foreclosure of the real estate mortgage and the sale at public auction; hence, the respondents had separate and independent causes of action against the bank, to wit: (a) the first complaint relates to the violation by the bank of the right to a judicial, not extrajudicial, foreclosure of the real estate mortgage and for an extension of the period for the respondents to redeem the property with damages; (b) the second complaint relates to the breach by the bank of its loan contract with the respondents by causing the extrajudicial foreclosure of the real estate mortgage for P4,500,000.00 which was in excess of their unpaid account with the bank.

However, we are convinced that the institution by the respondents of their second complaint anchored on their claim that the bank breached its loan contracts with them by erroneously computing the actual and correct balance of their account when the petition for extrajudicial foreclosure of the real estate mortgage was filed by it designed to avert the dismissal of their complaint due to splitting causes of action and *res judicata*, following the dismissal of their first complaint and the dismissal of their appeal through their negligence. The Court is constrained to conclude that this was a last-ditch attempt to resuscitate their lost cause, a brazen violation of the principle of *res judicata*.

Section 49(b)(c), Rule 39 of the Rules of Court provides in part:

SEC. 49. Effect of judgments. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

...

(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity.

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Section 49(b) enunciates the first concept of *res judicata*, known as bar by prior judgment or estoppel by

judgment, which refers to a theory or matter that has been definitely and finally settled on its merits by a court of competent jurisdiction without fraud or collusion.

There are four (4) essential requisites which must concur for the application of this doctrine:

(a)

finality of the former judgment;

(b)

the court which rendered it had jurisdiction over the subject matter and the parties;

(c)

it must be a judgment on the merits; and

(d)

there must be, between the first and second actions, identity of parties, subject matter and causes of action.[31]

A judgment or order is on the merits of the case when it determines the rights and liabilities of the parties based on the ultimate facts as disclosed by the pleadings or issues presented for trial. It is not necessary that a trial, actual hearing or argument on the facts of the case ensued. For as long as the parties had the full legal opportunity to be heard on their respective claims and contentions, the judgment or order is on the merits.[32] An order of the trial court on the ground that the complaint does not state a cause of action is a determination of the case on its merits.[33] Such order whether right or wrong bars another action based upon the same cause of action.[34] The operation of the order as res judicata is not affected by a mere right of appeal where the appeal has not been taken or by an appeal which never has been perfected.[35]

Indeed, absolute identity of parties is not a condition sine qua non for the application of res judicata. It is sufficient that there is a shared identity of interest.[36] The rule is that, even if new parties are found in the second action, res judicata still applies if the party against whom the judgment is offered in evidence was a party in the first action; otherwise, a case can always be renewed by the mere expedience of joining new parties in the new suit.[37]

The ultimate test to ascertain identity of causes of action is whether or not the same evidence fully supports and establishes both the first and second cases. The application of the doctrine of res judicata cannot be excused by merely varying the form of the action or engaging a different method of presenting the issue.[38]

Section 49(c) of Rule 39 enumerates the concept of conclusiveness of judgment. This is the second branch, otherwise known as collateral estoppel or estoppel by verdict. This applies where, between the first case wherein judgment is rendered and the second case wherein such judgment is involved, there is no identity of causes of action. As explained by this Court:

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to

look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action.[39]

In the present case, before the private respondents filed their first complaint, they already knew that the balance of their account with the bank was P4,500,000.00. They even offered to make a P1,000,000.00 partial payment of their loan to reduce their account to P3,500,000.00. These are gleaned from the averments in the first complaint:

- That the long process of negotiation for the right-of-way has unnecessarily delayed the project of the plaintiffs and has nearly caused the foreclosure of the mortgage property by the private defendant Bank, however, the said foreclosure was held in abeyance when plaintiffs offered to pay the additional amount of P1,000,000.00 which should leave a balance of the loan in the amount of P3,500,000.00;[40]

...

- That as the auction sale was highly irregular, obviously, the only bidder is the defendant Bank for the price limited to the remaining balance of the loan in the amount of P4,500,000.00, no more, no less;[41]

More telling is the private respondents' failure to object to the extrajudicial foreclosure of the real estate mortgage and the sale at public auction; they even pleaded to be allowed to redeem the property after it had already been sold at public auction. Patently then, the respondents were proscribed from claiming that the foreclosure of the real estate mortgage was for an amount in excess of the balance of their account and that the sale at public auction was irregular/illegal. As the Court held in *Aclon v. Court of Appeals*: [42]

In the absence of evidence proving that a judgment debtor was merely trying to protect himself or save his property, and that no reliance could or should have been placed upon his action in so doing, an attempt to redeem from an execution sale has been construed as a waiver of defects or irregularities therein, precluding him from relying upon them for the purpose of challenging its validity. When *Aclon* sought to redeem his property from PNB he never made any reservation with respect to his right to question the validity of the auction sale and to seek alternative relief before the courts. In other words, there was no indication whatsoever that he does not recognize the validity of the sale. If petitioner indeed felt that the assailed foreclosure proceedings were attended with any irregularity he should have filed the appropriate action with the court. Instead, he offered to repurchase the subject properties without any condition or reservation. Nevertheless, *Aclon* failed to comply with his undertaking and instead defaulted in his subsequent payments.

Redemption is inconsistent with the claim of invalidity of the sale. Redemption is an implied admission of the regularity of the sale and would estop the respondents from later impugning its validity on that ground.[43] Thus, the private respondents' pleas for extensions of time to redeem the subject property are of the same genre.

The private respondents admitted in their complaint in the first case that the bank only gave a one-month extension to redeem the property. Indeed, they made this declaration in their letter to the bank, dated July 2, 1999, copy of which was appended to their complaint (and thus made an integral part thereof), to wit:

Mr. Sonny Justiniano
Acquired Assets
International Exchange Bank
Salcedo Tower
169 H.V. De la Costa St.,
Salcedo Village, Makati City

Dear Sir:

Your deadline of September 7, 1999 is already fast approaching. Our action program to redeem the property has been stalled due to the infighting of the homeowners' association members. We were not permitted to build

access road to the property. They won't allow our equipment to pass and start work unless we get the approval of all the members. At present, there are two factions and they are at odds with each. Either side does not recognize the existence of the other. Our only option at the moment is to go to court and you know very well that this takes time.

Our interested buyers won't budge unless they see improvements in the property like in place drainage system and access road. We are ready to start work, however, the association has prevented us based on [the] above-stated reasons.

We have no other alternative but to once again appeal to you. We respectfully request for an extension of six months from September 7, 1999 to enable us to sort the association problem by court proceedings and place in motion our action program to redeem the property.

We pray that your kind heart will once again grant our request.

Thank you very much.

Very truly yours,
(Sgd.)

GAUDENCIO DIGOS[44]

If indeed the bank made an erroneous computation of the balance of their account as claimed by the private respondents in their second complaint, this should have been alleged in the first complaint as one of their causes of action. They failed to do so. The private respondents unequivocally admitted in their first complaint that the balance of their account with the bank was P4,500,000.00 which was the precise amount for which the bank sought the foreclosure of the real estate mortgage and the sale of the property at public auction; they even sought judicial recourse to enable them to redeem the property despite the lapse of the one-year period therefor.

Relying on these admissions on the part of the private respondents, and the fact that the bank has already consolidated its title over the property, the Court thus dismissed their first complaint. The Order of the Court dismissing the first complaint is a judgment of the case on the merits.

The attempt of the respondents in their second complaint to avoid the application of the principle of res judicata by claiming the nature of their account on the ground therefor and their legal theory cannot prosper. Case law has it that where a right, question or fact is distinctly put in issue and directly determined by a court of competent jurisdiction in a first case, between the same parties or their privies, the former adjudication of that fact, right or question is binding on the parties or their privies in a second suit irrespective of whether the causes of action are the same.[45] The ruling of the CA that the action of the private respondents and their legal theory in their second complaint were different from their causes of action and legal theory in the first complaint is not correct. A different cause of action is one that proceeds not only on a sufficiently different legal theory, but also on a different factual footing as not to require the trial of facts material to the former suit; that is, an action that can be maintained even if all disputed factual issues raised in the plaintiff's original complaint are concluded in defendant's favor.[46]

In this case, the private respondents' second complaint cannot be maintained without trying the facts material to the first case, and the second case cannot be maintained if all the disputed factual issues raised in the first complaint are considered in favor of the bank.

The principle of res judicata applies when the opportunity to raise an issue in the first complaint exists but the plaintiff failed to do so. Indeed, if the pleading of a different legal theory would have convinced the trial court to decide a particular issue in the first action which, with the use of diligence the plaintiffs could have raised therein

but failed to do so, they are barred by *res judicata*.^[47] Nor do legal theories operate to constitute a cause of action. New legal theories do not amount to a new cause of action so as to defeat the application of the principle of *res judicata*.^[48]

Indeed, in *Siegel v. Knott*,^[49] it was held that the statement of a different form of liability is not a different cause of action, provided it grows out of the same transaction or act and seeks redress for the wrong. Two actions are not necessarily for different causes of action simply because the theory of the second would not have been open under the pleadings in the first. A party cannot preserve the right to bring a second action after the loss of the first, merely by having circumscribed and limited theories of recovery opened by the pleadings in the first.^[50]

It bears stressing that a party cannot divide the grounds for recovery.^[51] A plaintiff is mandated to place in issue in his pleading, all the issues existing when the suit began. A lawsuit cannot be tried piecemeal.^[52] The plaintiff is bound to set forth in his first action every ground for relief which he claims to exist and upon which he relied, and cannot be permitted to rely upon them by piecemeal in successive action to recover for the same wrong or injury.^[53]

A party seeking to enforce a claim, legal or equitable, must present to the court, either by the pleadings or proofs, or both, on the grounds upon which to expect a judgment in his favor. He is not at liberty to split up his demands, and prosecute it by piecemeal or present only a portion of the grounds upon which a special relief is sought and leave the rest to the presentment in a second suit if the first fails. There would be no end to litigation if such piecemeal presentation is allowed.^[54]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision and Resolution of the Court of Appeals and the assailed Order of the RTC are SET ASIDE. The Regional Trial Court is ORDERED to dismiss the complaint in Civil Case No. Q-01-44227.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, p. 42.

[2] *Id.* at 43.

[3] *Id.*

[4] Rollo, p..44.

[5] *Id.* at 46.

[6] *Id.* at 33-39.

[7] Rollo, pp. 37-38.

[8] *Id.* at 47.

[9] *Id.* at 47-48.

[10] Rollo, pp. 47-48.

[11] *Id.* at 49.

[12] *Id.* at 61.

- [13] Id. at 50-67.
- [14] Rollo, pp. 65-66.
- [15] Rollo, p. 64.
- [16] Id. at 68.
- [17] Id.
- [18] Rollo, pp. 80-84.
- [19] Id. at 85-91.
- [20] Id. at 107.
- [21] Id. at 108-129.
- [22] Rollo, pp. 130-137
- [23] Id. at 159-160.
- [24] Id. at 236.
- [25] Nabus v. Court of Appeals, G.R. No. 91670, 7 February 1991, 193 SCRA 732.
- [26] Tuttle v. Everhot Heater Co., Inc., 249 N.W. 467 (1933).
- [27] City of Bacolod v. San Miguel Brewery, Inc., G.R. No. L-25134, 30 October 1969, 29 SCRA 819.
- [28] United States v. Pan-American Petroleum Co., 55 F.2d 753 (1932).
- [29] Nabus v. Court of Appeals, *supra*.
- [30] Osborne v. Kelly, 565 N.E. 2d 1340 (1991).
- [31] Carlet v. Court of Appeals, G.R. No. 114275, 7 July 1997, 275 SCRA 97.
- [32] Republic of the Philippines v. Court of Appeals, G.R. No. 103412, 3 February 2000, 324 SCRA 560.
- [33] Allied Banking Corporation v. Court of Appeals, G.R. No. 108089, 10 January 1994, 229 SCRA 252.
- [34] Bartsch v. Chamberlin Company of America, 266 F.2d 357 (1959).
- [35] Wight v. Montana-Dakota Utilities Co., 299 F.2d 470 (1962).
- [36] Cruz v. Court of Appeals, G.R. No. 135101, 31 May 2000, 332 SCRA 747.
- [37] Gallardo-Corro v. Gallardo, G.R. No. 136228, 30 January 2001, 350 SCRA 568.
- [38] Esperas v. Court of Appeals, G.R. No. 121182, 2 October 2000, 341 SCRA 583.
- [39] Nabus v. Court of Appeals, *supra*.
- [40] Rollo, p. 34.
- [41] Id. at 35.
- [42] G.R. No. 106880, 20 August 2002, 387 SCRA 415.
- [43] Cometa v. Intermediate Appellate Court, G.R. No. L-69294, 30 June 1987, 151 SCRA 563.

[44] Rollo, p. 43.

[45] *New York Life Insurance Co. v. Graham*, 92 F.2d 377 (1937).

[46] *Flores v. Edinburgh Consolidated Independent School District*, 741 F.2d 773 (1984).

[47] *Ibid.*

[48] *NLRB v. United Technologists Corporation*, 706 F.2d 1260 (1983); *Bin Saud v. Bank of New York*, 734 F. Supp. 628 (1990).

[49] 61 N.E.2d 130 (1945).

[50] *Ibid.*

[51] *Baltimore S.S. Co. v. Philipps*, 274 U.S., 316, 47 S.Ct. 600 (1927).

[52] *Walsh Construction Co. v. United States Guarantee Co.*, 76 F.2d 240 (1935).

[53] *Baltimore S.S. Co. v. Philipps*, *supra*.

[54] *Stark v. Starr*, 94 U.S. 477, 485 (1876).

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