

AIR ADS INCORPORATED, PETITIONER, VS. TAGUM AGRICULTURAL DEVELOPMENT CORPORATION (TADECO), RESPONDENT.

G.R. No. 160736. March 23, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Assailed via petition for review on certiorari are the two resolutions promulgated on February 24, 2003[1] and November 13, 2003,[2] whereby the Court of Appeals (CA) respectively dismissed the petitioner's petition for certiorari and prohibition, and denied the petitioner's motion for reconsideration of the dismissal.

We find no reversible error on the part of the CA, and affirm the dismissal of the petitioner's petition for certiorari.

Antecedents

This case stemmed from Civil Case No. 27802-2000 of the Regional Trial Court, Branch 15, in Davao City (RTC) entitled *Elva O. Pormento v. Tagum Agricultural Development Corporation and Edwin Yap*, an action to recover damages for the death of the plaintiffs husband and attorney's fees

On April 6, 2000, respondent Tagum Agricultural Development Corporation (TADECO), as defendant, filed through counsel ACCRA Law Office an answer with compulsory counterclaims and motion for leave to file third party complaint,[3] impleading petitioner Air Ads, Inc. and Pioneer Insurance and Surety Corporation (Pioneer) as third-party defendants. The RTC admitted TADECO's third party complaint on April 14, 2000.[4] On June 16, 2000, however, ACCRA Law Office, upon realizing that Pioneer was a client of its Makati Office, filed a notice of dismissal without prejudice to third party complaint only against Pioneer Insurance and Surety Corporation.[5]

Ten days later, TADECO filed through another counsel Dominguez Paderna & Tan Law Offices (Dominguez Law Office) a motion to withdraw notice of dismissal without prejudice of third party complaint only against Pioneer Insurance & Surety Corporation or motion for reconsideration,[6] alleging that the notice of dismissal without prejudice etc. filed by ACCRA Law Office had been made without its consent. On June 29, 2000, the RTC granted the notice of dismissal without prejudice etc.[7]

Nearly a month later, the RTC also granted the motion to withdraw notice of dismissal without prejudice of third party complaint only against Pioneer Insurance & Surety Corporation or motion for reconsideration, and set aside the dismissal of the third party complaint against Pioneer.

Following the grant of its motion to withdraw the notice of dismissal etc., TADECO, still through Dominguez Law Office, filed a motion to admit third party complaint in substitution of the third party complaint filed by the third party plaintiff's former counsel,[8] explaining that the substitute third party complaint was being filed to avoid putting ACCRA Law Office in an awkward situation, and to avoid the appearance that new counsel Dominguez Law Office was merely adopting the previous third party complaint.

It is noted that the substitute third party complaint contained allegations pertaining only to Pioneer as third party defendant, to wit:

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5. Under the heading "ADMISSIONS" of the answer of TADECO it alleged:

"TADECO admits the allegations in the following paragraphs of the complaint:

xxx xxx xxx xxx

"1.3 Paragraph 3 only in so far as it is alleged that TADECO is the owner of the CESSNA 550 Citation jetplane; and that the aircraft is duly registered with the Air Transportation Office."

6. The CESSNA 550 Citation jetplane, hereinafter referred to as the Citation jetplane, was insured by PIONEER INSURANCE under Aircraft Insurance Policy No. AV-HO-96-60014 effective December 02, 1996 to December 02, 1997, a copy of which is attached as Annex "C" by virtue of which PIONEER INSURANCE agreed to be bound by the following stipulation:

"SECTION II - Third Party Liability

The Company will indemnify the Assured for all sums which the Assured shall become legally liable to pay and shall pay as compensation, including costs awarded, in respect of accidental bodily injury (fatal or non-fatal) or accidental damage to property provided such injury or damage is caused directly by the Aircraft or by objects falling therefrom."

7. Should TADECO be found liable to the plaintiff under the complaint, the third-party plaintiff is entitled to recover from PIONEER INSURANCE indemnification for its liability to the plaintiff.

WHEREFORE, the third party plaintiff respectfully prays that in the remote probability that TADECO would be held liable to the plaintiffs under the complaint, that judgment be rendered ordering Pioneer Insurance to indemnify TADECO all sums which the latter maybe found liable to the plaintiffs.

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On August 28, 2000, the RTC granted the motion to admit third party complaint in substitution of the third party complaint filed by the third party plaintiff s former counsel,[10] viz:

The dismissal of defendant and Third Party Plaintiffs-Tagum Agricultural Development Corporation complaint was without prejudice. Considering further that the dismissal was filed by its former counsel who is also the lawyer of Pioneer Insurance and Surety Corporation, the Motion to Admit Third Party complaint in substitution of the Third Party complaint that was dismissed is hereby granted.

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SO ORDERED.

Air Ads then filed a motion to dismiss against the third party complaint,[11] averring that it had been dropped as third party defendant under TADECO's substitute third party complaint; and arguing that the filing of the substitute third party complaint had the effect of entirely superseding the original third party complaint, which should consequently be stricken out from the records.

TADECO, represented by ACCRA Law Office, countered that it had never been the intention of Dominguez Law Office to file a new third party complaint against Air Ads because Dominguez Law Office represented TADECO only in regards to the third party complaint against Pioneer.[12]

On July 25, 2002, the RTC denied Air Ads' motion to dismiss,[13] holding that the notice of dismissal etc. filed by ACCRA Law Office did not have the effect of dropping Air Ads as a third party defendant due to the notice of dismissal etc. being expressly restrictive about the dismissal being only with respect to Pioneer, to wit:

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The first, third party complaint as against Air-ads was not dismissed so there is no reason to grant Air-ads' Motion to Dismiss.

It should be emphasized that the Notice of Dismissal filed by the former counsel of third party plaintiff was restrictive that the dismissal was its third complaint against Pioneer only, Air-ads is still a third party defendant there is nothing to show that it was dropped as a third party defendant by virtue of the said dismissal.

The motion that the first third party complaint filed by the former counsel of Tadeco be removed from the record and declared as no longer existing and that Air-ads should no longer be treated as a party is without any legal basis.

In view whereof the Motion to Dismissed [sic] is denied for lack of merit. Air-ads is given ten (10) days from receipt of this order to file its answer.

The pre-trial shall be on September 18, 2002.

Notify all the parties of this order.

SO ORDERED.

Air Ads filed a motion for reconsideration,[14] but the RTC denied the motion for reconsideration on September 20, 2002,[15] stating:

Third Party defendant Air Ads' Motion for Reconsideration is denied for lack of merit. This issue was repeatedly discussed by the parties in their pleadings and the court resolution on this matter is clear. The pre-trial conference shall be on October 4, 2002 at 2:30 p.m.

SO ORDERED.

After receiving the order of denial on October 4, 2002,[16] Air Ads brought a petition for certiorari and prohibition docketed in the CA (C.A.-G.R. SP No. 73418).[17] However, on November 13, 2002, the CA dismissed the petition for failure to attach the board resolution designating the petitioner's duly authorized representative to sign the verification and certification against forum shopping in its behalf.[18]

Instead of filing a motion for reconsideration, Air Ads filed a new petition for certiorari and prohibition on December 2, 2002 in the CA (C.A.-G.R. SP No. 74152),[19] already including the proper board certificate.

While C.A.-G.R. SP No. 74152 was pending, the CA's resolution dismissing C.A.-G.R. SP No. 73418 became final and executory on December 10, 2002.[20]

On February 24, 2003, the CA issued the first assailed resolution in C.A.-G.R. SP No. 74152,[21] viz:

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Petitioner's reasoning is specious. The notice of dismissal clearly stated that the dismissal pertains only to the third party complaint against Pioneer Insurance, not as against petitioner Air Ads. The third-party complaint against petitioner was never dismissed. Thus, when TADECO's new counsel sought to revive the third-party complaint against Pioneer, the allegations in the substitute third-party complaint pertain only to Pioneer since petitioner Air Ads was never dropped as third-party defendant in the proceedings. Petitioner's motion to dismiss was correctly denied by the trial court.

ACCORDINGLY, the petition is DENIED due course and DISMISSED.

SO ORDERED.

The CA denied Air Ads's motion for reconsideration through the second assailed resolution of November 13, 2003.[22]

Hence, this appeal by petition for review on certiorari.

TADECO, through ACCRA Law Office, filed its comment on March 30, 2004,²³ but on April 26, 2004, TADECO, through Dominguez Law Office, filed a motion to dispense with comment of Tagum Agricultural Development Corporation as third-party plaintiff against Pioneer Insurance Corporation[24] Accordingly, the Court directed TADECO to manifest which between ACCRA Law Office and Dominguez Law Office was its principal counsel.[25] In compliance, TADECO manifested that ACCRA Law Office was its counsel in Civil Case No. 27802-2000 and in the third party complaint against Air Ads, while Dominguez Law Office was its counsel in the third party complaint against Pioneer.[26] After the Court directed the parties to submit their respective memoranda,²⁷ TADECO, through Dominguez Law Office and as third-party plaintiff against Pioneer, filed a manifestation and motion,[28] praying that it be excused from filing a memorandum considering that Pioneer was not involved in the present recourse. On June 20, 2005, the Court granted the manifestation and motion[29]

Issues

The issues to be resolved are as follows:

I.

DOES THE FILING OF AN IDENTICAL PETITION FOLLOWING THE DISMISSAL OF THE FIRST PETITION ON THE GROUND OF DEFECTIVE AND INSUFFICIENT VERIFICATION AND CERTIFICATION CONSTITUTE FORUM SHOPPING?

II.

DOES A SUBSTITUTE THIRD PARTY COMPLAINT HAVE THE EFFECT OF SUPERSEDING THE ORIGINAL THIRD PARTY COMPLAINT?

Air Ads insists that the filing of the substitute third party complaint had the effect of dropping it as third party defendant in Civil Case No. 27802-2000; and that the substitute third party complaint superseded the original third party complaint.

On the other hand, TADECO counters that the filing of the second petition for certiorari and prohibition in the CA violated the rule against forum shopping and was already barred by res judicata due to the dismissal of the first being an adjudication on the merits; and that Air Ads continued to be a third party defendant because the third party complaint against Air Ads had not been withdrawn or dismissed.

Ruling

The petition for review lacks merit.

I.

Refiling of the petition for certiorari did not constitute forum shopping or res judicata

TADECO's contention, that Air Ads' filing of the second petition while the first petition was still pending was a clear case of forum shopping; and that, accordingly, the second petition of Air Ads was already barred by res

judicata due to the dismissal of the first petition having resulted in an adjudication upon the merits, conformably with *Denoso v. Court of Appeals*[30] has no substance.

The dispositive portion of the CA's resolution of November 13, 2002 in C.A.-G.R. SP No. 73418, which dismissed the first petition, reads:

WHEREFORE, the instant petition is hereby DISMISSED for defective and insufficient verification and certification against forum shopping.

SO ORDERED.

Section 5, Rule 7 of the 1997 Rules of Civil Procedure, defines the effect of the failure to comply with the requirements for the certification against forum shopping, viz:

Section 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 for 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. (n)

The first sentence of the second paragraph expressly provides that the dismissal of a petition due to failure to comply with the requirements therein is without prejudice unless otherwise provided by the court. Accordingly, the plaintiff or petitioner is not precluded from filing a similar action in order to rectify the defect in the certification where the court states in its order that the action is dismissed due to such defect, unless the court directs that the dismissal is with prejudice, in which case the plaintiff is barred from filing a similar action by res judicata. In the context of the aforequoted rule, the dismissal of C.A.-G.R. SP No. 73418, being without any qualification, was a dismissal without prejudice, plainly indicating that Air Ads could not be barred from filing the second petition.

TADECO cited *Denoso v. Court of Appeals*, supra, to buttress its contention that the present recourse was already barred by res judicata. There, the petitioners had failed to attach the necessary copies of the relevant pleadings to their petition for certiorari, thereby causing the dismissal of the petition. They had then sought reconsideration by submitting the omitted documents, but the CA denied their motion for reconsideration. On appeal, the Court upheld the dismissal of the petition on the ground that it amounted to an adjudication upon the merits pursuant to Section 3, Rule 17 of the Rules of Court,[31] which provides that failure to comply with the rules shall result in the dismissal that has the effect of an adjudication upon the merits. The lack of any qualification that the dismissal of the petition was without prejudice rendered the dismissal an adjudication on the merits.

Herein, however, Section 5 of Rule 7, supra, promulgated after the *Denoso* pronouncement, provides that "the dismissal of the case (is) without prejudice, unless otherwise provided." In this connection, the apt precedent is

Heirs of Juan Valdez v. Court of Appeals,[32] where the respondent corporation filed two petitions for certiorari in the CA, the first of which was dismissed without prejudice due to insufficient certification. After receiving the resolution dismissing the first petition, the respondent corporation refiled its petition, which was docketed and raffled to another division of the CA. The issue of whether the filing of the second petition constituted forum shopping reached this Court, which resolved the issue thuswise:

We have no doubt that it was within the CA's power and prerogative to issue what either resolution decreed without committing an abuse of discretion amounting to lack of excess of jurisdiction. In the first May 5, 2003 Resolution, the CA correctly dismissed the petition for the deficiency it found in the non-forum shopping certification. Section 5, Rule 7 of the Revised Rules of Court provides that "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 for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing." On the other hand, the requirement specific to petitions filed with the appellate court simply provides as a penalty that the failure of the petitioner to comply with the listed requirements, among them the need for a certification against forum shopping, "shall be sufficient ground for the dismissal of the petition." Thus, the Ninth Division correctly dismissed the petition without prejudice.

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The question of whether Lopez Resources forum shopped when it re-filed its petition is largely rendered moot and academic by the terms of the assailed May 5, 2003 order which dismissed the case without prejudice. Lopez Resources, who cannot be blamed for the CA's mistake, only followed what the assailed order allowed. Thus, we cannot say that it forum shopped by filing another petition while the first petition was pending. Insofar as it was concerned, its first petition had been dismissed without prejudice; hence, there was no bar, either by way of forum shopping, *litis pendentia* or *res adjudicata*, to the petition it re-filed.[33]

Indeed, Air Ads' options to correct its dire situation included the re-filing, for, although the Rules of Court declares that the failure to comply with the requirements of Section 5 of Rule 7 shall not be cured by amendment, nowhere does the rule prohibit the filing of a similar complaint or pleading following the dismissal without qualification of the earlier one.

II.

Substitute third party complaint did not
supersede original third party complaint

The posture of Air Ads that the original third party complaint was automatically expunged from the records upon the admission of the substitute third party complaint[34] is bereft of any basis in fact and in law.

The records indicate that: firstly, both TADECO and Pioneer were clients of ACCRA Law Office; secondly, TADECO engaged Dominguez Law Office as its counsel in lieu of ACCRA Law Office with respect only to its third party complaint against Pioneer; thirdly, the RTC dismissed the third party complaint only against Pioneer upon the notice of withdrawal filed by TADECO through ACCRA Law Office; and fourthly, the RTC granted the motion to admit the substitute third party complaint only against Pioneer. These rendered it plain and clear that the substitute third party complaint merely replaced the third party complaint earlier filed against Pioneer.

Air Ads' urging that the filing of the substitute third party complaint effectively superseded the third party complaint impleading it as third party defendant ostensibly harks back to Section 8 of Rule 10 of the Rules of Court, which states that the amended pleading supersedes the pleading that it amends.[35] However, the substitution of the third party complaint could not produce the effect that an amendment of an existing pleading produces. Under Section I,[36] Rule 10 of the Rules of Court, an amendment is done by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect. A perusal of the original and the substitute third party complaints

shows that their averments are substantially the same; and that the substitute third party complaint did not strike out any allegation of the prior one.

Lastly, Air Ads attributes error to the CA and the RTC for disregarding the caption and the allegations of the substitute third party complaint that would have led them to rule that the original third party complaint was effectively superseded and supplanted by the substitute third party complaint. It submits that "substitution" signifies "to put in the place of another;" and "something that is put in place of something else or is available for use instead of something else."

Air Ads' submission is flawed. It is not the caption of the pleading that determines the nature of the complaint but rather its allegations.^[37] Although Air Ads' observation that the substitute third party complaint contained allegations only against Pioneer is correct, sight should not be lost of the fact that Dominguez Law Office represented TADECO in its third party complaint only against Pioneer, which was precisely why the substitute third party complaint referred only to Pioneer.

WHEREFORE, we deny the petition for review on certiorari, and affirm the resolutions the Court of Appeals promulgated on February 24, 2003 and November 13, 2003.

Costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, pp. 35-36; penned by Associate Justice Ruben T. Reyes (later Presiding Justice, and Member of the Court), and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Edgardo F. Sundiam (deceased).

[2] Id., pp. 38-39; penned by Associate Justice Reyes, and concurred in by Associate Justice Salazar-Fernando and Associate Justice Sundiam.

[3] Rollo, pp. 42-57.

[4] Id., p. 242.

[5] Id., pp. 89-90.

[6] Id., pp. 92-96.

[7] Id., p. 246.

[8] Id., pp. 97-104.

[9] Id., pp. 258-259.

[10] Id., p. 342.

[11] Id., pp. 105-109.

[12] Id., pp. 110-119.

[13] Id., pp. 124-125.

[14] Id., pp. 127-129.

[15] *Id.*, p. 137.

[16] *Id.*, pp. 138.

[17] *Id.*, pp. 374-388.

[18] *Id.*, p. 390; penned by Associate Justice Sergio L. Pestaño (retired and deceased), and concurred in by Associate Justice Cancio C. Garcia (later Presiding Justice, and Member of the Court, but already retired) and Associate Justice Eloy R. Bello, Jr. (retired).

[19] *Id.*, pp. 138-153.

[20] *Id.*, p. 391.

[21] *Id.*, pp. 7-8.

[22] *Id.*, pp. 14-15.

[23] *Id.*, pp. 171-188.

[24] *Id.*, pp. 416-422.

[25] *Id.*, p. 423.

[26] *Id.*, pp. 424-433.

[27] *Id.*, pp. 457-458.

[28] *Id.*, pp. 497-498.

[29] *Id.*, pp. 500-501.

[30] G.R.No. L-32141, July 29, 1988, 163 SCRA 683.

[31] Section 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon the motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

[32] G.R. No. 163208, August 13, 2008, 562 SCRA 89.

[33] *Id.* (bold emphasis supplied); see also *Development Bank of the Philippines v. La Campana Development Corporation*, G.R. No. 137694, January 17, 2005, 448 SCRA 384.

[34] *Rollo*, p. 465.

[35] Section 8. Effect of amended pleadings. — An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived. (n)

[36] Section 1. Amendments in general. - Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

[37] *Anadon v. Herrera*, G.R. No. 159153, July 9, 2007, 527 SCRA 90, 97.

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