

FERDINAND S. AGUSTIN, PETITIONER, VS. SPS. MARIANO AND PRESENTACION DELOS SANTOS, RESPONDENTS.

G.R. No. 168139. January 20, 2009

Ponente: PUNO, C.J.

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PUNO, C.J.:

Before us is a petition for review on certiorari under Rule 45 seeking a review of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA G.R. SP No. 80586 partly reversing the decision[3] of the Regional Trial Court (RTC), Branch 33, Manila.

As borne by the records, respondent spouses Mariano delos Santos and Presentacion delos Santos are the lawful owners of apartment units located at 230 Manrique Street, Sampaloc, Manila.[4] On the other hand, petitioner Ferdinand Agustin has continuously occupied one of respondents' apartment units since 1990 for a monthly rent of two thousand pesos (P2,000.00). The monthly rental was increased to two thousand three hundred pesos (P2,300.00) in May 1999.[5]

On May 10, 2000, respondents filed a complaint for ejectment against petitioner before Branch 22 of the Metropolitan Trial Court (MeTC) of Manila docketed as Civil Case No. 167142-CV. Respondents alleged that they needed to repossess the apartment unit occupied by the petitioner because their daughter's children would be studying at the University of Sto. Tomas in Manila.[6]

In a decision dated January 9, 2002, the MeTC, Branch 22 held:

Based on the evidence adduced by both parties, this Court is of the opinion, and so holds that the instant complaint for ejectment lodged by the plaintiffs against the defendants, **MUST BE DISMISSED** for lack of cause of action, it appearing that plaintiffs failed to comply with the requirements when the ground for ejectment is personal need of the premises.

WHEREFORE, premises considered, the instant complaint is hereby **DISMISSED** without prejudice to the right of the plaintiffs to collect the monthly rental of two thousand three hundred pesos (P2,300.00) agreed upon in the Lease Contract and the corresponding fifteen percent (15%) increase thereof, in accordance with the new rent control law with costs against the plaintiff.

The counterclaim is likewise dismissed.

SO ORDERED.[7]

The decision lapsed into finality and was enforced by the respondents through the imposition and collection of the monthly rent and the corresponding fifteen percent (15%) increase thereon. A few months thereafter, respondents, in a Notice of Termination dated October 10, 2002, informed petitioner of the termination of the verbal month-to-month contract of lease and gave him thirty (30) days within which to vacate and peacefully surrender the premises.[8]

The petitioner failed to vacate the premises despite notice. Thus, respondents again filed a complaint for ejectment against petitioner on the ground of termination of the contract of lease. The second ejectment case, which is the subject of the instant petition, was docketed as Civil Case No. 174168 in Branch 15 of the MeTC of Manila.

In a decision dated June 12, 2003, the MeTC, Branch 15 ruled that petitioner's reliance on *res judicata* was misplaced because the cause of action in Civil Case No. 174168 is anchored on a different ground.[9] According to the MeTC, the verbal lease contract that existed between the parties on a month-to-month basis pursuant to Article 1687 of the Civil Code is one with a fixed term, and terminates at the end of each month, if notice to vacate is properly given. Accordingly, the lease period had already expired. Hence:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendant, ordering the latter and all persons claiming right under him, to vacate the subject premises and surrender peaceful possession thereof to the plaintiffs, and for defendant to pay plaintiffs:

a) the fair rental value or reasonable compensation for the continued use and occupation of the premises at the rate of P5,000.00 per month effective upon the date of filing of the complaint on November 19, 2002 and until the premises shall have been totally vacated; and

b) attorney's fees in the amount of Ten Thousand (P10,000.00) Pesos, plus the costs of suit.

SO ORDERED.[10]

On appeal, the RTC of Manila reversed the MeTC decision, thus:

The Court agrees with the first error cited by the defendant-appellant.

Indeed, the Court *a quo* cannot require the defendant-appellant to pay the plaintiffs-appellees the amount of Php5,000.00 per month as the fair rental value or a reasonable compensation for the continued use and occupation of the premises because before the termination of the month to month verbal contract of lease, the rental being paid was P2,530.00 per month.

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The court *a quo* was in error when it ruled that *res judicata* does not apply in this case.

The court *a quo* ruled that there is no *res judicata* because there is no identity of cause of action. The Court stated that in the first ejectment case decided by Hon. Hipolito dela Vega the ground for ejectment was based on the need by the lessor of the leased premises, while the case at bar is based on the expiration or termination. This is erroneous because there is only one cause of action--unlawful detainer--although this cause of action may give the plaintiffs several reliefs. They may eject the defendant on the ground of 'need of premises by owner' or 'expiration of the period of verbal lease agreement'. And when the plaintiffs-appellees filed two separate complaints for these reliefs against the defendant-appellant, such acts constitute splitting up of the cause of action. Thus, under Section 4, Rule 2 of the Revised Rules of Civil Procedure, 'If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.'

Consequently, since the ejectment case based on 'the use of the premises by the owner' filed by the plaintiffs-appellees was dismissed on the merits by the Honorable Judge Hipolito dela Vega, the filing of the case at bar against the defendant-appellant may be dismissed on the ground of *res judicata*.

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WHEREFORE, the judgment appealed from is REVERSED on the ground of *res judicata*. The Clerks of Court of the Regional Trial Court and the Metropolitan Trial Court of Manila are ordered to return to the appellant the excess of P5,000.00 a month or the sum of P2,217 a month beginning August 2003. The supersedeas bond

put up by the appellant is ordered cancelled and the appellees are ordered to pay the cost of the supersedeas bond; and to pay the cost of suit.

SO ORDERED.[11]

Respondents repaired to the CA, which partially reversed the findings of the RTC. In its decision, the CA found that the acts and omissions complained of and involved in the two civil cases were not the same.[12] Likewise, the appellate court applied the "same evidence" test and decided that there was no identity of causes of action between the first and second cases of ejectment as different facts and evidence were needed for the resolution of each case, and consequently, the principle of res judicata as a bar by prior judgment was inapplicable.[13] It was also found that res judicata in the concept of "conclusiveness of judgment" will not apply since the "personal need" issue decided upon in the first case is different from and does not encompass any element of the "expiration of lease contract" at issue in the second case.[14] Lastly, the CA declared that the lease contract between the parties was on a month-to-month basis and that petitioner should vacate the subject premises because his lease had already expired.[15] Thus, the dispositive portion of the decision reads:

WHEREFORE, premises considered, the Decision dated October 14, 2003 of the Regional Trial Court, Branch 33, Manila is PARTLY REVERSED as follows:

- a) Appellees-petitioners' complaint for Ejectment is GRANTED;
- b) Appellant-respondent and all persons claiming right under him are hereby ORDERED TO VACATE the subject premises and to surrender peaceful possession thereof to appellees-petitioners; and
- c) The appellees-petitioners must reimburse the appellant-respondent the amount in excess of the monthly rental of P2,530.00 that the appellees-petitioners can charge until the appellant-respondent surrenders peaceful possession of the premises to them.

SO ORDERED.[16]

Petitioner filed a motion for reconsideration of said Decision, which was also denied by the appellate court.

Persisting in his position that the principle of res judicata in its concept of bar by prior judgment should apply in the instant case and that therefore, the first suit for ejectment should operate as a bar to the present action for ejectment, petitioner is now before us questioning the order of the CA for him to vacate the leased premises.

Res judicata is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." [17] According to the doctrine of res judicata, 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. [18] To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. [19]

The principle of res judicata is applicable by way of: 1) "bar by prior judgment" and 2) "conclusiveness of judgment." We have had occasion to explain the difference between these two aspects of res judicata as follows:

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[20]

In the case at bar, petitioner seeks to apply the principle of *res judicata* in its concept of "bar by prior judgment" by pointing out that the final decision rendered in the first case for ejectment, Civil Case No. 167142-CV, constitutes a bar to the litigation of the second ejectment suit, the subject of the instant petition.[21]

We find no merit in the argument of the petitioner.

Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and of causes of action.[22]

In the case before us, the existence of and compliance with the first three elements is undisputed. Likewise, there is no issue as to the identity of the parties in the two actions for ejectment. Hence, the identity of subject matter and the identity of causes of action between the first and second ejectment cases are the only remaining bones of contention in need of our final determination concerning the issue of *res judicata*.

As to the subject matter, we find that there is no identity. The subject matter of an action is "the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property, or the contract and its subject matter, or the thing in dispute." [23] In an unlawful detainer case, the subject matter is the contract of lease between the parties while the breach thereof constitutes the suit's cause of action.[24] In the present case, the lease contract subject of the controversy is verbal and on a monthly basis. In these instances, it is well settled that the lease is one with a definite period which expires after the last day of any given thirty-day period.[25] Following this reasoning, it becomes apparent that what exists between the parties is not just one continuous contract of lease, but a succession of lease contracts, each spanning a period of one month. Hence, to be accurate, each action for ejectment--each referring to a unique thirty-day period of occupation of respondents' property by the petitioner--deals with a separate and distinct lease contract corresponding to a separate and distinct juridical relation between the parties. Considering, therefore, that the subject matter of Civil Case No. 167142-CV is a different contract of lease from the subject matter of the instant case, it is obvious that there is no identity of subject matter between the first ejectment suit and the ejectment suit subject of the present action.

Since there is no identity of subject matter between the two cases, it is but logical to conclude that there is likewise no identity of causes of action. A cause of action is the act or omission by which a party violates the legal right of the other.[26] Here, petitioner argues that there is but one single cause of action in both ejectment suits as "the alleged acts of dispossession or unlawful withholding of possessions were the same delict or wrong that were alleged and prayed for by the respondents in both complaints for ejectment." [27] Petitioner is mistaken. In the first action for ejectment, respondents' cause of action consists of petitioner's continued possession of the premises in violation of respondents' legal rights under the provisions of the amended Rent Control Act, which rights were deemed included into the lease contract existing at the time of the filing of the case in May 2000.[28] On the other hand, the cause of action in the second suit only materialized when petitioner refused to vacate the premises despite receipt of the notice of termination of lease sent by respondents on October 10, 2002 and the expiration of

the 30-day grace period given him. From that moment on, petitioner's possession of the leased premises became unlawful and a new cause of action accrued. Hence, the cause of action in the present case for ejectment only arose subsequent to the dismissal of the first ejectment suit dated January 9, 2002. Therefore, while the causes of action in the first and second ejectment suits are similar in that both consist of unlawful possession by petitioner, they are not identical. Each act of refusal to vacate by petitioner--one in May 2000 and another in October 2002--breached separate and distinct lease contracts which consequently gave birth to separate and distinct causes of action. Petitioner's contention that there is but one single cause of action in the two ejectment suits must perforce fail.

We have previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.[29] In one case,[30] we held that the failure of the petitioner to secure an injunction to prevent the respondents from entering the land and gathering nuts is not inconsistent with the petitioner's being adjudged the owner of the land. In another case,[31] we found that affirmative relief in a subsequent action for specific performance and recovery of ownership and possession with damages against the petitioner would be inconsistent with a prior judgment holding the same petitioner the owner of the lot under litigation.

Applying the same test to the case before us, we are convinced that a finding in the instant case that the lease contract has already expired would not be inconsistent with the finding of lack of cause of action in the first ejectment case. Petitioner asserts that the expiration of the lease contract is one of the requisites of ejectment on the ground of "need of premises," and that necessarily, the issue of expiration of the lease contract had already been disposed of in the first ejectment case. Accordingly, petitioner contends that a decision in favor of respondents in the instant case would in effect be inconsistent with the decision rendered in the first ejectment case. Petitioner's contention is bereft of merit. We reiterate that the subject matter of the first ejectment suit, on the one hand, and the subject matter of the second ejectment suit, on the other, are two separate and distinct contracts of lease. Given these facts, the issue of expiration of lease contract involved in the first case is different and far removed from the issue of expiration of the lease contract subject of the instant case. Logically, any ruling on the expiration of lease contract in the earlier ejectment case will never be conclusive on this subsequent case.

Conceding, for the sake of argument, petitioner's premise that the first and second ejectment cases involve the same lease contract, petitioner's argument still does not hold water, but even serves to boost respondents' case. It is to be noted that by singling out the issue of the expiration of the lease contract, petitioner invoked the application of *res judicata* in the concept of "conclusiveness of judgment." Well settled is the rule that where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.[32] In the first case for ejectment, it bears stressing that the dismissal of the complaint only declared that the respondents failed to comply with the requirements when the ground for ejectment is personal need of premises. Notably, no express pronouncement can be found in the decision of the MeTC of Manila, Branch 22 as to whether or not the lease contract subsisting between the parties had already expired. The decision therefore only directly attests to respondents' lack of cause of action when the ground for ejectment is personal need of premises, and not to the particular issue of expiration of the contract of lease subsisting between the parties. Hence, we cannot sustain petitioner's reliance on the doctrine of conclusiveness of judgment as regards the expiration of the purportedly subsisting lease contract.

The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the

following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?"[33] If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not.

In our view, a simple application of this test to the facts of the instant case readily reveals that the evidence necessary to obtain affirmative relief in the present action for ejectment based on expiration of lease contract is not the same as that in the first ejectment case based on "need of premises." At this juncture, we again stress that there is no identity of subject matter between the previous and present ejectment suits. This finding necessarily translates to the utter difference in the pieces of evidence necessary to prove the causes of action in the two actions.

Aside from the "absence of inconsistency test" and "same evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent one when it had "touched on [a] matter already decided,"[34] or if the parties are in effect "litigating for the same thing,"[35] Under these tests, however, petitioner's reliance on the applicability of the principle of *res judicata* is still for naught, given that the two cases for ejectment do not share the same subject matter. We have consistently held that a judgment in a previous case of ejectment could not serve as a bar to a subsequent one if the latter is predicated on a new factual and juridical situation. As a consequence, even in cases where the dismissal of a suit brought for the ejectment of the lessee for nonpayment of rentals for a given period becomes final and executory, the lessor is still not precluded from making a new demand upon the tenant to vacate should the latter again fail to pay the rents due or should another ground for ejectment arise, in which case such subsequent demand and refusal of the tenant to vacate shall constitute a new cause of action.[36]

Finally, the circumstances of the case at bar are comparable to those in *Siapian v. Court of Appeals*, which likewise involved a monthly verbal contract of lease. We disposed of the issue of identity of causes of action in the following manner:

The first ejectment case had for a cause of action based on the need for the premises. The second ejectment case involved a different cause of action, that is, for non-payment of rentals up to February 1982. In the third case, the cause of action was the need for the premises and non-payment of rentals from November 1987 up to May 1988. In this latest ejectment suit, the cause of action is the non-payment of rentals from December 1987 accumulating to P17,064.65. Clearly, the cause of action and the circumstances present in the instant case are not the same but differ markedly from those in previous suits cited. Reliance on the doctrine of *res judicata* by petitioner is sadly misplaced.[37]

We are not unaware of authorities that tend to widen rather than to restrict the doctrine of *res judicata* for the reason that public interest, as well as private interest, demands an end to litigation as well as the protection of the individual from being vexed twice for the same cause-.[38] Indeed, to adhere otherwise would "subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness."[39] However, as in this case, we do not see how untempered overzealousness can help work justice into a situation where an application of the principle of *res judicata* is clearly not proper.

As to the issue of novation raised by petitioner, we are not persuaded by the latter's theory that the acceptance of rental payments by respondents pending the final determination of the instant petition amounts to a novation of the decision of the CA ordering petitioner to vacate the subject leased premises. In the first place, there is nothing to novate because as petitioner himself pounds on, the judgment to vacate has not yet become final. Furthermore, it bears stressing that novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by acts that are too clear and unequivocal to be mistaken.[40] In the

present case, no intent to novate can be gleaned from the parties' actuations as they entered into the subsequent lease contracts with the qualification that the instant petition is pending before this Court. Hence, the final outcome of the judgment in this case will only operate as a resolutive condition to the existing contract between the parties as regards the leased premises.

IN VIEW WHEREOF, the instant petition is DENIED. The decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Carpio, Corona, Azcuna and Leonardo-De Castro, JJ., concur.

[1] Promulgated on February 3, 2005.

[2] Dated May 18, 2005.

[3] Dated October 14, 2003.

[4] Rollo, p. 30.

[5] Id. at p. 62.

[6] Id.

[7] Id. at p. 64.

[8] CA Rollo, p. 99.

[9] Rollo, p. 66.

[10] Id.

[11] Id. at pp. 70-72.

[12] Id. at p. 37.

[13] Id. at pp. 38-39.

[14] Id. at p. 40.

[15] Id. at p. 41.

[16] Id. at p. 42.

[17] Oropeza Marketing Corporation v. Allied Banking Corporation, G.R. No. 129788, December 3, 2002, 393 SCRA 278, 285, quoting Black's Law Dictionary, 4th Ed. (1968).

[18] Philippine National Bank v. Barreto, et al., 52 Phil. 818, 823-824 (1929).

[19] Taganas v. Emulsan, G.R. No. 146980, September 2, 2003, 410 SCRA 237, 241-242.

[20] Oropeza Marketing Corp. v. Allied Banking Corp., supra note 17; Alamayri v. Pabale, et al., G.R. No. 151243, April 30, 2008.

[21] Civil Case No. 174168.

[22] Cruz v. CA, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 388; Taganas v. Emulsan, supra note 19; Arenas v. Court of Appeals, et al., G.R. No. 126640, November 23, 2000, 345 SCRA 617, 628; Filipinas

Investment and Finance Corporation v. Intermediate Appellate Court, G.R. Nos. 66059-60, December 4, 1989, 179 SCRA 728, 736.

[23] Bachrach Corporation v. Court of Appeals, G.R. No. 128349, September 25, 1998, 296 SCRA 487, 494; Filipinas Investment and Finance Corporation v. Intermediate Appellate Court, id; Yusingco v. Ong Hing Lian, No. L-26523, December 24, 1971, 42 SCRA 598, 603.

[24] Bachrach Corporation v. Court of Appeals, id.; Siapian v. Court of Appeals, G.R. No. 111928, March 1, 2000, 327 SCRA 11, 18.

[25] Baens v. Court of Appeals, No. L-57091, November 23, 1983, 125 SCRA 634, 644; La Jolla, Inc. v. Court of Appeals, G.R. No. 115851, June 20, 2001, 359 SCRA 102, 110.

[26] Rule 2, Section 2, 1997 Rules of Civil Procedure; Bachrach Corporation v. Court of Appeals, supra note 24; Development Bank of the Philippines v. Pundogar, G.R. No. 96921, January 29, 1993, 218 SCRA 118, 132; Racoma v. Fortich, No. L-29380, June 10, 1971, 39 SCRA 520, 524; Santos v. Intermediate Appellate Court, G.R. No. 66671, October 28, 1986, 145 SCRA 238, 245.

[27] Rollo, p. 144.

[28] See Chua v. Victorio, G.R. No. 157568, May 18, 2004, 428 SCRA 447, 456.

[29] Tan v. Valdehueza, No. L-38745, August 6, 1975, 66 SCRA 61, 64.

[30] Id.

[31] Valencia, et al. v. Regional Trial Court, G.R. No. 82112, April 3, 1990, 184 SCRA 80, 92.

[32] Alamayri v. Pabale, et al., supra note 20.; Oropeza Marketing Corp. v. Allied Banking Corp., supra note 17.

[33] Santos v. Intermediate Appellate Court, supra note 26; Cruz v. CA, supra note 22; Development Bank of the Philippines v. Pundogar, supra note 26.

[34] Arenas v. Court of Appeals, et al., supra note 22 at 629.

[35] Id.

[36] Guiang v. Samano, G.R. No. 50501, April 22, 1991, 196 SCRA 114, 120; Limpan Investment Corporation v. Lim Sy, No. L-31920, April 8, 1988, 159 SCRA 484, 491; Viray v. Mariñas, No. L-33168, January 11, 1973, 49 SCRA 45, 53.

[37] Supra note 24 at 21.

[38] Vda. de Cruz v. Carriaga, Jr., G.R. Nos. 75109 & 10174, June 28, 1989, 174 SCRA 330, 341, citing Paz v. Inandan, 75 Phil. 608 (1945).

[39] Cruz v. CA, supra note 22, citing Heirs of the Late Faustina Adalid v. Court of Appeals, G.R. No. 122202, May 26, 2005, 459 SCRA 27, 39.

[40] California Bus Lines, Inc. v. State Investment House, Inc., G.R. No. 147950, December 11, 2003, 418 SCRA 297, 309.

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