

**REBECCA PACAÑA-CONTRERAS AND ROSALIE PACAÑA,  
PETITIONERS, VS. ROVILA WATER SUPPLY, INC., EARL U. KOKSENG,  
LILIA TORRES, DALLA P. ROMANILLOS AND MARISA GABUYA,  
RESPONDENTS.**

*G.R. No. 168979. December 02, 2013*

Ponente: BRION, J.

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**BRION, J.:**

Before the Court is a petition for review on certiorari[1] under Rule 45 of the Rules of Court seeking the reversal of the decision[2] dated January 27, 2005 and the resolution[3] dated June 6, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 71551. The CA set aside the orders dated February 28, 2002[4] and April 1, 2002[5] of the Regional Trial Court (RTC), Branch 8, Cebu City, which denied the motion to dismiss and the motion for reconsideration, respectively, of respondents Rovila Water Supply, Inc. (Rovila Inc.), Earl U. Kokseng, Lilia Torres, Dalla P. Romanillos and Marisa Gabuya.

**THE FACTUAL ANTECEDENTS**

Petitioners Rebecca Pacaña-Contreras and Rosalie Pacaña, children of Lourdes Teves Pacaña and Luciano Pacaña, filed the present case against Rovila Inc., Earl, Lilia, Dalla and Marisa for accounting and damages.[6] The petitioners claimed that their family has long been known in the community to be engaged in the water supply business; they operated the “Rovila Water Supply” from their family residence and were engaged in the distribution of water to customers in Cebu City.

The petitioners alleged that Lilia was a former trusted employee in the family business who hid business records and burned and ransacked the family files. Lilia also allegedly posted security guards and barred the members of the Pacaña family from operating their business. She then claimed ownership over the family business through a corporation named “Rovila Water Supply, Inc.” (Rovila Inc.) Upon inquiry with the Securities and Exchange Commission (SEC), the petitioners claimed that Rovila Inc. was surreptitiously formed with the respondents as the majority stockholders. The respondents did so by conspiring with one another and forming the respondent corporation to takeover and illegally usurp the family business’ registered name.[7]

In forming the respondent corporation, the respondents allegedly used the name of Lourdes as one of the incorporators and made it appear in the SEC documents that the family business was operated in a place other than the Pacaña residence. Thereafter, the respondents used the Pacaña family’s receipts and the deliveries and sales were made to appear as those of the respondent Rovila Inc. Using this scheme, the respondents fraudulently appropriated the collections and payments.[8]

The petitioners filed the complaint in their own names although Rosalie was authorized by Lourdes through a sworn declaration and special power of attorney (SPA). The respondents filed a first motion to dismiss on the ground that the RTC had no jurisdiction over an intra-corporate controversy.[9] The RTC denied the motion.

On September 26, 2000, Lourdes died[10] and the petitioners amended their complaint, with leave of court, on October 2, 2000 to reflect this development.[11] They still attached to their amended complaint the sworn declaration with SPA, but the caption of the amended complaint remained the same.[12] On October 10, 2000, Luciano also died.[13]

The respondents filed their Answer on November 16, 2000.[14] The petitioners' sister, Lagrimas Pacaña-Gonzales, filed a motion for leave to intervene and her answer-in-intervention was granted by the trial court. At the subsequent pre-trial, the respondents manifested to the RTC that a substitution of the parties was necessary in light of the deaths of Lourdes and Luciano. They further stated that they would seek the dismissal of the complaint because the petitioners are not the real parties in interest to prosecute the case. The pre-trial pushed through as scheduled and the RTC directed the respondents to put into writing their earlier manifestation. The RTC issued a pre-trial order where one of the issues submitted was whether the complaint should be dismissed for failure to comply with Section 2, Rule 3 of the Rules of Court which requires that every action must be prosecuted in the name of the real party in interest.[15]

On January 23, 2002,[16] the respondents again filed a motion to dismiss on the grounds, among others, that the petitioners are not the real parties in interest to institute and prosecute the case and that they have no valid cause of action against the respondents.

### THE RTC RULING

The RTC denied the respondents' motion to dismiss. It ruled that, save for the grounds for dismissal which may be raised at any stage of the proceedings, a motion to dismiss based on the grounds invoked by the respondents may only be filed within the time for, but before, the filing of their answer to the amended complaint. Thus, even granting that the defenses invoked by the respondents are meritorious, their motion was filed out of time as it was filed only after the conclusion of the pre-trial conference. Furthermore, the rule on substitution of parties only applies when the parties to the case die, which is not what happened in the present case.[17] The RTC likewise denied the respondents' motion for reconsideration.[18]

The respondents filed a petition for certiorari under Rule 65 of the Rules of Court with the CA, invoking grave abuse of discretion in the denial of their motion to dismiss. They argued that the deceased spouses Luciano and Lourdes, not the petitioners, were the real parties in interest. Thus, the petitioners violated Section 16, Rule 3 of the Rules of Court on the substitution of parties.[19] Furthermore, they seasonably moved for the dismissal of the case[20] and the RTC never acquired jurisdiction over the persons of the petitioners as heirs of Lourdes and Luciano.[21]

### THE CA RULING

The CA granted the petition and ruled that the RTC committed grave abuse of discretion as the petitioners filed the complaint and the amended complaint as attorneys-in-fact of their parents. As such, they are not the real parties in interest and cannot bring an action in their own names; thus, the complaint should be dismissed[22] pursuant to the Court's ruling in *Casimiro v. Roque and Gonzales*. [23]

Neither are the petitioners suing as heirs of their deceased parents. Pursuant to jurisprudence,[24] the petitioners should first be declared as heirs before they can be considered as the real parties in interest. This cannot be done in the present ordinary civil case but in a special proceeding for that purpose.

The CA agreed with the respondents that they alleged the following issues as affirmative defenses in their answer: 1) the petitioners are not the real parties in interest; and 2) that they had no legal right to institute the action in

behalf of their parents.[25] That the motion to dismiss was filed after the period to file an answer has lapsed is of no moment. The RTC judge entertained it and passed upon its merit. He was correct in doing so because in the pre-trial order, one of the submitted issues was whether the case must be dismissed for failure to comply with the requirements of the Rules of Court. Furthermore, in *Dabuco v. Court of Appeals*,[26] the Court held that the ground of lack of cause of action may be raised in a motion to dismiss at anytime.[27]

The CA further ruled that, in denying the motion to dismiss, the RTC judge acted contrary to established rules and jurisprudence which may be questioned via a petition for certiorari. The phrase “grave abuse of discretion” which was traditionally confined to “capricious and whimsical exercise of judgment” has been expanded to include any action done “contrary to the Constitution, the law or jurisprudence[.]”[28]

### THE PARTIES’ ARGUMENTS

The petitioners filed the present petition and argued that, first, in annulling the interlocutory orders, the CA unjustly allowed the motion to dismiss which did not conform to the rules.[29] Specifically, the motion was not filed within the time for, but before the filing of, the answer to the amended complaint, nor were the grounds raised in the answer. Citing Section 1, Rule 9 of the Rules of Court, the respondents are deemed to have waived these grounds, as correctly held by the RTC.[30]

Second, even if there is non-joinder and misjoinder of parties or that the suit is not brought in the name of the real party in interest, the remedy is not outright dismissal of the complaint, but its amendment to include the real parties in interest.[31]

Third, the petitioners sued in their own right because they have actual and substantial interest in the subject matter of the action as heirs or co-owners, pursuant to Section 2, Rule 3 of the Rules of Court.[32] Their declaration as heirs in a special proceeding is not necessary, pursuant to the Court’s ruling in *Marabilles, et al. v. Quito*. [33] Finally, the sworn declaration is evidentiary in nature which remains to be appreciated after the trial is completed.[34]

The respondents reiterated in their comment that the petitioners are not the real parties in interest.[35] They likewise argued that they moved for the dismissal of the case during the pre-trial conference due to the petitioners’ procedural lapse in refusing to comply with a condition precedent, which is, to substitute the heirs as plaintiffs. Besides, an administrator of the estates of Luciano and Lourdes has already been appointed.[36]

The respondents also argued that the grounds invoked in their motion to dismiss were timely raised, pursuant to Section 2, paragraphs g and i, Rule 18 of the Rules of Court. Specifically, the nature and purposes of the pre-trial include, among others, the dismissal of the action, should a valid ground therefor be found to exist; and such other matters as may aid in the prompt disposition of the action. Finally, the special civil action of certiorari was the proper remedy in assailing the order of the RTC.[37]

### THE COURT’S RULING

We find the petition meritorious.

Petition for certiorari under Rule 65 is a proper remedy for a denial of a motion to dismiss attended by grave abuse of discretion

In *Barrazona v. RTC, Branch 61, Baguio City*, [38] the Court held that while an order denying a motion to dismiss is interlocutory and non-appealable, certiorari and prohibition are proper remedies to address an order of denial made without or in excess of jurisdiction. The writ of certiorari is granted to keep an inferior court within the

bounds of its jurisdiction or to prevent it from committing grave abuse of discretion amounting to lack or excess of jurisdiction.

The history and development of the ground “fails to state a cause of action” in the 1940, 1964 and the present 1997 Rules of Court

Preliminarily, a suit that is not brought in the name of the real party in interest is dismissible on the ground that the complaint “fails to state a cause of action.”[39] Pursuant to jurisprudence,[40] this is also the ground invoked when the respondents alleged that the petitioners are not the real parties in interest because: 1) the petitioners should not have filed the case in their own names, being merely attorneys-in-fact of their mother; and 2) the petitioners should first be declared as heirs.

A review of the 1940, 1964 and the present 1997 Rules of Court shows that the fundamentals of the ground for dismissal based on “failure to state a cause of action” have drastically changed over time. A historical background of this particular ground is in order to preclude any confusion or misapplication of jurisprudence decided prior to the effectivity of the present Rules of Court.

The 1940 Rules of Court provides under Section 10, Rule 9 that:

Section 10. Waiver of defenses - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the defense of failure to state a cause of action, which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5 of Rule 17 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action. [underscoring supplied]

This provision was essentially reproduced in Section 2, Rule 9 of the 1964 Rules of Court, and we quote:

Section 2. Defenses and objections not pleaded deemed waived.— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5 of Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action. [underscoring supplied]

Under the present Rules of Court, this provision was reflected in Section 1, Rule 9, and we quote:

Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. [underscoring supplied]

Notably, in the present rules, there was a deletion of the ground of “failure to state a cause of action” from the list of those which may be waived if not invoked either in a motion to dismiss or in the answer.

Another novelty introduced by the present Rules, which was totally absent in its two precedents, is the addition of the period of time within which a motion to dismiss should be filed as provided under Section 1, Rule 16 and we quote:

Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds: xxx [underscoring supplied]

All these considerations point to the legal reality that the new Rules effectively restricted the dismissal of complaints in general, especially when what is being invoked is the ground of “failure to state a cause of action.” Thus, jurisprudence governed by the 1940 and 1964 Rules of Court to the effect that the ground for dismissal based on failure to state a cause of action may be raised anytime during the proceedings, is already inapplicable to cases already governed by the present Rules of Court which took effect on July 1, 1997.

As the rule now stands, the failure to invoke this ground in a motion to dismiss or in the answer would result in its waiver. According to Oscar M. Herrera,[41] the reason for the deletion is that failure to state a cause of action may be cured under Section 5, Rule 10 and we quote:

Section 5. Amendment to conform to or authorize presentation of evidence. — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

With this clarification, we now proceed to the substantial issues of the petition.

The motion to dismiss in the present case based on failure to state a cause of action was not timely filed and was thus waived

Applying Rule 16 of the Rules of Court which provides for the grounds for the dismissal of a civil case, the respondents’ grounds for dismissal fall under Section 1(g) and (j), Rule 16 of the Rules of Court, particularly, failure to state a cause of action and failure to comply with a condition precedent (substitution of parties), respectively.

The first paragraph of Section 1,[42] Rule 16 of the Rules of Court provides for the period within which to file a motion to dismiss under the grounds enumerated. Specifically, the motion should be filed within the time for, but before the filing of, the answer to the complaint or pleading asserting a claim. Equally important to this provision is Section 1,[43] Rule 9 of the Rules of Court which states that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except for the following grounds: 1) the court has no jurisdiction over the subject matter; 2) *litis pendencia*; 3) *res judicata*; and 4) prescription.

Therefore, the grounds not falling under these four exceptions may be considered as waived in the event that they are not timely invoked. As the respondents’ motion to dismiss was based on the grounds which should be timely invoked, material to the resolution of this case is the period within which they were raised.

Both the RTC and the CA found that the motion to dismiss was only filed after the filing of the answer and after the pre-trial had been concluded. Because there was no motion to dismiss before the filing of the answer, the respondents should then have at least raised these grounds as affirmative defenses in their answer. The RTC’s assailed orders did not touch on this particular issue but the CA ruled that the respondents did, while the petitioners insist that the respondents did not. In the present petition, the petitioners reiterate that there was a blatant non-observance of the rules when the respondents did not amend their answer to invoke the grounds for dismissal which were raised only during the pre-trial and, subsequently, in the subject motion to dismiss.[44]

The divergent findings of the CA and the petitioners’ arguments are essentially factual issues. Time and again, we have held that the jurisdiction of the Court in a petition for review on certiorari under Rule 45, such as the present

case, is limited only to questions of law, save for certain exceptions. One of these is attendant herein, which is, when the findings are conclusions without citation of specific evidence on which they are based.[45]

In the petition filed with the CA, the respondents made a passing allegation that, as affirmative defenses in their answer, they raised the issue that the petitioners are not the real parties in interest.[46] On the other hand, the petitioners consistently argued otherwise in their opposition[47] to the motion to dismiss, and in their comment[48] and in their memorandum[49] on the respondents' petition before the CA.

Our examination of the records shows that the CA had no basis in its finding that the respondents alleged the grounds as affirmative defenses in their answer. The respondents merely stated in their petition for certiorari that they alleged the subject grounds in their answer. However, nowhere in the petition did they support this allegation; they did not even attach a copy of their answer to the petition. It is basic that the respondents had the duty to prove by substantial evidence their positive assertions. Considering that the petition for certiorari is an original and not an appellate action, the CA had no records of the RTC's proceedings upon which the CA could refer to in order to validate the respondents' claim. Clearly, other than the respondents' bare allegations, the CA had no basis to rule, without proof, that the respondents alleged the grounds for dismissal as affirmative defenses in the answer. The respondents, as the parties with the burden of proving that they timely raised their grounds for dismissal, could have at least attached a copy of their answer to the petition. This simple task they failed to do.

That the respondents did not allege in their answer the subject grounds is made more apparent through their argument, both in their motion to dismiss[50] and in their comment,[51] that it was only during the pre-trial stage that they verbally manifested and invited the attention of the lower court on their grounds for dismissal. In order to justify such late invocation, they heavily relied on Section 2(g) and (i), Rule 18[52] of the Rules of Court that the nature and purpose of the pre-trial include, among others, the propriety of dismissing the action should there be a valid ground therefor and matters which may aid in the prompt disposition of the action.

The respondents are not correct. The rules are clear and require no interpretation. Pursuant to Section 1, Rule 9 of the Rules of Court, a motion to dismiss based on the grounds invoked by the respondents may be waived if not raised in a motion to dismiss or alleged in their answer. On the other hand, "the pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. The purpose is to obviate the element of surprise, hence, the parties are expected to disclose at the pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privileged or impeaching matter." [53] The issues submitted during the pre-trial are thus the issues that would govern the trial proper. The dismissal of the case based on the grounds invoked by the respondents are specifically covered by Rule 16 and Rule 9 of the Rules of Court which set a period when they should be raised; otherwise, they are deemed waived.

The Dabuco ruling is inapplicable in the present case; the ground for dismissal "failure to state a cause of action" distinguished from "lack of cause of action"

To justify the belated filing of the motion to dismiss, the CA reasoned out that the ground for dismissal of "lack of cause of action" may be raised at any time during the proceedings, pursuant to *Dabuco v. Court of Appeals*. [54] This is an erroneous interpretation and application of *Dabuco* as will be explained below.

First, in *Dabuco*, the grounds for dismissal were raised as affirmative defenses in the answer which is in stark contrast to the present case. Second, in *Dabuco*, the Court distinguished between the dismissal of the complaint for "failure to state a cause of action" and "lack of cause of action." The Court emphasized that in a dismissal of action for lack of cause of action, "questions of fact are involved, [therefore,] courts hesitate to declare a plaintiff as lacking in cause of action. Such declaration is postponed until the insufficiency of cause is apparent from a preponderance of evidence. Usually, this is done only after the parties have been given the opportunity to present

all relevant evidence on such questions of fact.”[55] In fact, in *Dabuco*, the Court held that even the preliminary hearing on the propriety of lifting the restraining order was declared insufficient for purposes of dismissing the complaint for lack of cause of action. This is so because the issues of fact had not yet been adequately ventilated at that preliminary stage. For these reasons, the Court declared in *Dabuco* that the dismissal by the trial court of the complaint was premature.

In the case of *Macaslang v. Zamora*,[56] the Court noted that the incorrect appreciation by both the RTC and the CA of the distinction between the dismissal of an action, based on “failure to state a cause of action” and “lack of cause of action,” prevented it from properly deciding the case, and we quote:

Failure to state a cause of action and lack of cause of action are really different from each other. On the one hand, failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause [of] action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. Justice Regalado, a recognized commentator on remedial law, has explained the distinction:

xxx What is contemplated, therefore, is a failure to state a cause of action which is provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the pleading. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence does not prove a cause of action. This is, therefore, a matter of insufficiency of evidence. Failure to state a cause of action is different from failure to prove a cause of action. The remedy in the first is to move for dismissal of the pleading, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted. [italics supplied]

Based on this discussion, the Court cannot uphold the dismissal of the present case based on the grounds invoked by the respondents which they have waived for failure to invoke them within the period prescribed by the Rules. The Court cannot also dismiss the case based on “lack of cause of action” as this would require at least a preponderance of evidence which is yet to be appreciated by the trial court.

Therefore, the RTC did not commit grave abuse of discretion in issuing the assailed orders denying the respondents’ motion to dismiss and motion for reconsideration. The Court shall not resolve the merits of the respondents’ grounds for dismissal which are considered as waived.

Other heirs of the spouses Pacaña to be impleaded in the case

It should be emphasized that insofar as the petitioners are concerned, the respondents have waived the dismissal of the complaint based on the ground of failure to state a cause of action because the petitioners are not the real parties in interest.

At this juncture, a distinction between a real party in interest and an indispensable party is in order. In *Carandang v. Heirs of de Guzman, et al.*,[57] the Court clarified these two concepts and held that “[a] real party in interest is the party who stands to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit. On the other hand, an indispensable party is a party in interest without whom no final determination can be had of an action, in contrast to a necessary party, which is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. xxx If a suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action. However, the dismissal on this ground entails an examination of whether the parties presently pleaded are interested in the outcome of the litigation, and not whether all persons interested in such outcome are actually pleaded. The latter

query is relevant in discussions concerning indispensable and necessary parties, but not in discussions concerning real parties in interest. Both indispensable and necessary parties are considered as real parties in interest, since both classes of parties stand to be benefited or injured by the judgment of the suit.”

At the inception of the present case, both the spouses Pacaña were not impleaded as parties-plaintiffs. The Court notes, however, that they are indispensable parties to the case as the alleged owners of Rovila Water Supply. Without their inclusion as parties, there can be no final determination of the present case. They possess such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Their interest in the subject matter of the suit and in the relief sought is inextricably intertwined with that of the other parties.[58]

Jurisprudence on the procedural consequence of the inclusion or non-inclusion of an indispensable party is divided in our jurisdiction. Due to the non-inclusion of indispensable parties, the Court dismissed the case in *Lucman v. Malawi, et al.*[59] and *Go v. Distinction Properties Development Construction, Inc.*,[60] while in *Casals, et al. v. Tayud Golf and Country Club et al.*,[61] the Court annulled the judgment which was rendered without the inclusion of the indispensable parties.

In *Arcelona et al. v. Court of Appeals*[62] and *Bulawan v. Aquende*,[63] and *Metropolitan Bank & Trust Company v. Alejo et al.*[64] the Court ruled that the burden to implead or order the impleading of an indispensable party rests on the plaintiff and on the trial court, respectively. Thus, the non-inclusion of the indispensable parties, despite notice of this infirmity, resulted in the annulment of these cases.

In *Plasabas, et al. v. Court of Appeals, et al.*,[65] the Court held that the trial court and the CA committed reversible error when they summarily dismissed the case, after both parties had rested their cases following a protracted trial, on the sole ground of failure to implead indispensable parties. Non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable.

However, in the cases of *Quilatan, et al. v. Heirs of Quilatan, et al.*[66] and *Lagunilla, et al. v. Monis, et al.*,[67] the Court remanded the case to the RTC for the impleading of indispensable parties. On the other hand, in *Lotte Phil. Co., Inc. v. Dela Cruz*,[68] *PepsiCo, Inc. v. Emerald Pizza*,[69] and *Valdez-Tallorin, v. Heirs of Tarona, et al.*,[70] the Court directly ordered that the indispensable parties be impleaded.

Mindful of the differing views of the Court as regards the legal effects of the non-inclusion of indispensable parties, the Court clarified in *Republic of the Philippines v. Sandiganbayan, et al.*[71], that the failure to implead indispensable parties is a curable error and the foreign origin of our present rules on indispensable parties permitted this corrective measure. This cited case held:

Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants is indeed a procedural aberration xxx, slight reflection would nevertheless lead to the conclusion that the defect is not fatal, but one correctible under applicable adjective rules – e.g., Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence]; Section 1, Rule 20 [governing amendments before trial], in relation to the rule respecting omission of so-called necessary or indispensable parties, set out in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old familiar doctrines that the omission to implead such parties "is a mere technical defect which can be cured at any stage of the proceedings even after judgment"; and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the complaint otherwise indicates their identity and character as

such indispensable parties."

Although there are decided cases wherein the non-joinder of indispensable parties in fact led to the dismissal of the suit or the annulment of judgment, such cases do not jibe with the matter at hand. The better view is that non-joinder is not a ground to dismiss the suit or annul the judgment. The rule on joinder of indispensable parties is founded on equity. And the spirit of the law is reflected in Section 11, Rule 3 of the 1997 Rules of Civil Procedure. It prohibits the dismissal of a suit on the ground of non-joinder or misjoinder of parties and allows the amendment of the complaint at any stage of the proceedings, through motion or on order of the court on its own initiative.

Likewise, jurisprudence on the Federal Rules of Procedure, from which our Section 7, Rule 3 on indispensable parties was copied, allows the joinder of indispensable parties even after judgment has been entered if such is needed to afford the moving party full relief. Mere delay in filing the joinder motion does not necessarily result in the waiver of the right as long as the delay is excusable.

In *Galicia, et al. v. Vda. De Mindo, et al.*,<sup>[72]</sup> the Court ruled that in line with its policy of promoting a just and inexpensive disposition of a case, it allowed the intervention of the indispensable parties instead of dismissing the complaint. Furthermore, in *Commissioner Domingo v. Scheer*,<sup>[73]</sup> the Court cited *Salvador, et al. v. Court of Appeals, et al.*<sup>[74]</sup> and held that the Court has full powers, apart from that power and authority which are inherent, to amend the processes, pleadings, proceedings and decisions by substituting as party-plaintiff the real party in interest. The Court has the power to avoid delay in the disposition of this case, and to order its amendment in order to implead an indispensable party.

With these discussions as premises, the Court is of the view that the proper remedy in the present case is to implead the indispensable parties especially when their non-inclusion is merely a technical defect. To do so would serve proper administration of justice and prevent further delay and multiplicity of suits. Pursuant to Section 9, Rule 3 of the Rules of Court, parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action. If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order.<sup>[75]</sup> The operative act that would lead to the dismissal of the case would be the refusal to comply with the directive of the court for the joinder of an indispensable party to the case.<sup>[76]</sup>

Obviously, in the present case, the deceased Pacañas can no longer be included in the complaint as indispensable parties because of their death during the pendency of the case. Upon their death, however, their ownership and rights over their properties were transmitted to their heirs, including herein petitioners, pursuant to Article 774<sup>[77]</sup> in relation with Article 777<sup>[78]</sup> of the Civil Code. In *Orbeta, et al. v. Sendiong*,<sup>[79]</sup> the Court acknowledged that the heirs, whose hereditary rights are to be affected by the case, are deemed indispensable parties who should have been impleaded by the trial court.

Therefore, to obviate further delay in the proceedings of the present case and given the Court's authority to order the inclusion of an indispensable party at any stage of the proceedings, the heirs of the spouses Pacaña, except the petitioners who are already parties to the case and Lagrimas Pacaña-Gonzalez who intervened in the case, are hereby ordered impleaded as parties-plaintiffs.

WHEREFORE, the petition is GRANTED. The decision dated January 27, 2005 and the resolution dated June 6, 2005 of the Court of Appeals in CA-G.R. SP No. 71551 are REVERSED and SET ASIDE. The heirs of the spouses Luciano and Lourdes Pacaña, except herein petitioners and Lagrimas Pacaña-Gonzalez, are ORDERED IMPEADED as parties-plaintiffs and the RTC is directed to proceed with the trial of the case with DISPATCH.

**SO ORDERED.**

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

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[1] Rollo, pp. 9-30.

[2] Id. at 31-43; penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Sesonando E. Villon and Ramon M. Bato, Jr.

[3] Id. at 44-45.

[4] Id. at 58-60; penned by Presiding Judge Antonio T. Echavez.

[5] Id. at 66-67.

[6] Docketed as Civil Case No. CEB-25327; id. at 32.

[7] Id. at 13-14.

[8] Id. at 15.

[9] Id. at 34.

[10] Ibid.

[11] Id. at 35.

[12] Ibid.

[13] Supra note 4.

[14] Supra note 6.

[15] Rollo, pp. 35-36.

[16] Id. at 83.

[17] Id. at 59, 66-67.

[18] Id. at 66.

[19] CA rollo, p. 10.

[20] Id. at 11.

[21] Ibid.

[22] Rollo, 37-39.

[23] 98 Phil. 880 (1956).

[24] Heirs of Yaptinchay v. Hon. Del Rosario, 363 Phil. 393, 397-398 (1999); Litam, etc., et al. v. Rivera, 100 Phil. 364, 378 (1956); and Solivio v. Court of Appeals, 261 Phil. 231, 242 (1990).

[25] Rollo, p. 35.

[26] 379 Phil. 939 (2000).

[27] Rollo, p. 41.

[28] Id. at 42.

[29] Id. at 20-21.

[30] Id. at 22, 126.

[31] Id. at 21, 26, 126.

[32] Id. at 131.

[33] 100 Phil. 64 (1956).

[34] Rollo, p. 130.

[35] Id. at 78-79.

[36] Id. at 79-80.

[37] Id. at 75-76.

[38] 521 Phil. 53, 59-60 (2006).

[39] Carandang v. Heirs of De Guzman et al., 538 Phil. 326, 334 (2006); Tankiko v. Cezar, 362 Phil. 184, 194-195 (1999), citing Lucas v. Durian, 102 Phil. 1157-1158 (1957); Nebrada v. Heirs of Alivio, 104 Phil. 126, 128-129 (1958); Gabila v. Bariga, 148-B Phil. 615, 618-619 (1971); Travel Wide Associated Sales (Phils.), Inc. v. CA, 276 Phil. 219, 224 (1991).

[40] Heirs of Yaptinchay v. Hon. Del Rosario, supra note 23; and Filipinas Industrial Corp., et al. v. Hon. San Diego, et al., 132 Phil. 195 (1968).

[41] Remedial Law Volume I, 2007 Ed., pp. 794-795.

[42] Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds[.]

[43] Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[44] Rollo, p. 22.

[45] Insular Investment and Trust Corporation v. Capital One Equities Corp., G.R. No. 183308, April 25, 2012, 671 SCRA 112, 125; and Conrada O. Almagro v. Sps. Manuel Amaya, Sr., et al., G.R. No. 179685, June 19, 2013.

[46] CA rollo, p. 6.

[47] Id. at 118.

[48] Id. at 112.

[49] Id. at 133, 136.

[50] Id. at 83.

[51] Id. at 73-77.

[52] Section 2. Nature and purpose. — The pre-trial is mandatory. The court shall consider: xxx (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist; xxx (i) Such other matters as may aid in the prompt disposition of the action.

[53] Sps. Mercader v. Dev't Bank of the Phils. (Cebu Br.), 387 Phil. 828, 843 (2000).

[54] Supra note 25.

[55] Id. at 946.

[56] G.R. No. 156375, May 30, 2011, 649 SCRA 92, 106-107, citing Regalado, Remedial Law Compendium, Volume I, Ninth Revised Ed. (2005), p. 182.

[57] 538 Phil. 319, 333-334 (2006).

[58] Republic v. Marcos-Manotoc, G.R. No. 171701, February 8, 2012, 665 SCRA 367, 392.

[59] 540 Phil. 289, 301-303, 305-306 (2006).

[60] G.R. No. 194024, April 25, 2012, 671 SCRA 461, 475-478, 482.

[61] G.R. No. 183105, July 22, 2009, 593 SCRA 468, 503.

[62] 345 Phil. 250, 275 (1997).

[63] G.R. No. 182819, June 22, 2011, 652 SCRA 585, 597.

[64] 417 Phil. 303, 318 (2001).

[65] G.R. No. 166519, March 31, 2009, 582 SCRA 686, 692-693.

[66] G.R. No. 183059, August 28, 2009, 597 SCRA 519, 525.

[67] G.R. No. 169276, June 16, 2009, 589 SCRA 224, 236.

[68] 502 Phil. 816, 822 (2005).

[69] 556 Phil. 711, 720 (2007).

[70] G.R. No. 177429, November 24, 2009, 605 SCRA 259, 266.

[71] 453 Phil. 1060, 1147-1149, citing Republic v. Sandiganbayan, 240 SCRA 376, 469.

[72] 549 Phil. 595, 610 (2007).

[73] 466 Phil. 235, 266 (2004).

[74] G.R. No. 109910, April 5, 1995, 243 SCRA 239.

[75] Lagunilla v. Velasco, supra; and Plasabas v. Court of Appeals, supra.

[76] Nocom v. Camerino, et al., G.R. No. 182984, Feb. 10, 2009, 578 SCRA 390, 413.

[77] Article 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.

[78] Article 777. The rights to the succession are transmitted from the moment of the death of the decedent.

[79] 501 Phil. 482, 490-492 (2005).

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