

GENEROSO A. JUABAN and FRANCIS M. ZOSA, Petitioners, vs. RENE ESPINA and CEBU DISCOVERY BAY PROPERTIES, INC., Respondents.*G.R. No. 170049. March 14, 2008*

Ponente: CHICO-NAZARIO, J.

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This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by the late Generoso A. Juaban (Juaban), now substituted by his heirs, and Francis M. Zosa (Zosa), assailing the Decision[1] dated 31 January 2005 of the Court of Appeals in CA-G.R. CV No. 60721, wherein the appellate court (1) made permanent the Writ of Preliminary Injunction it had earlier issued, enjoining petitioners from exercising rights of ownership over Lots No. 6720-C-2 and 6720-B-2, respectively, covered by Transfer Certificates of Title (TCTs) No. 36425 and No. 36426 of the Registry of Deeds of Lapu-Lapu City; (2) set aside the Decision of the Lapu-Lapu City Regional Trial Court (RTC), Branch 54, in Civil Case No. 4871-L which ordered the dismissal of the case; and (3) directed the RTC to undertake further proceedings in Civil Case No. 4871-L insofar as the issue of damages was concerned.

The present Petition stems from the proceedings in Civil Case No. 4871-L before the Lapu-Lapu City RTC, Branch 54, but is still directly related to two other cases, particularly, Civil Case No. 2309-L before the Lapu-Lapu RTC, Branch 27, and (2) A.M. No. P-02-1580 before this Court, which we cannot simply overlook. The direct antecedent of the present petition, Civil Case No. 4871-L before the Lapu-Lapu City RTC, Branch 54, is the last of the three cases we are presenting hereunder:

CASE No. 1: *Bancale v. Paras*, Civil
Case No. 2309-L, Lapu-Lapu City
RTC, Branch 27

The Heirs of Conrado Bancale filed before the Lapu-Lapu City RTC, Branch 27, a case for the recovery of the properties subject of the present Petition against a certain Eva Paras and other persons, which was docketed as Civil Case No. 2309-L. On 22 January 1996, petitioners Juaban and Zosa entered their appearance as counsels for the Heirs of Bancale.

The Heirs of Bancale later entered into a 31 January 1997 Agreement to Sell and to Buy with respondent Rene Espina (Espina), paragraph 5 of which states:

That after the title is transferred to their names, the First Party [Heirs of Bancale] will execute an absolute deed of sale in favor of the second party [herein respondent Rene Espina] or whoever will be designated by him as the vendee for the consideration mentioned in paragraph 2 hereof. The amount of P2,000,000.00 advanced by the Second Party shall form part of said consideration.[2]

In accordance with said Agreement, respondent Espina paid petitioners P2,000,000.00 as an advance on the purchase price for the subject properties for the benefit of the Heirs of Bancale. Respondent Espina then designated the other respondent in this case, Cebu Bay Discovery Properties, Inc. (CDPI), as the vendee of the

said properties.

Later, on 1 September 1997, respondents learned that petitioners, counsels Juaban and Zosa, had filed on 26 August 1997, at around 1:10 p.m., a Motion to fix their attorney's fees in Civil Case No. 2309-L. They also learned that the Lapu-Lapu City RTC, Branch 27, had issued an Order on the very same date of 26 August 1997, at around 2:20 p.m., granting the motion and fixing petitioners' attorney's fees in the amount of P9,000,000.00. The Heirs of Bancale filed a Motion for Reconsideration, but the same was denied in an Order dated 22 September 1997. The Heirs of Bancale received a copy of the Order denying their Motion for Reconsideration on 9 October 1997, after which they filed a Notice of Appeal dated 15 October 1997. However, without waiting for the expiration of the period to appeal of the Heirs of Bancale, the Lapu-Lapu City RTC, Branch 27, issued on 10 October 1997 an Order, which states:

Considering that the Order of this Court dated 26 August 1997 has already become final and executory, not having been appealed, the motion for execution is hereby GRANTED.

Let a Writ of Execution issue to satisfy the Order dated August 26, 1997 to enforce the same fixing the attorney's fees.

Sheriff Juan A. Gato of this Branch is hereby directed to implement the Writ.[3]

The Heirs of Bancale filed another Motion for Reconsideration, this time, of the 10 October 1997 Order. Without directly ruling on this Motion, the Lapu-Lapu City RTC, Branch 27, issued on 14 October 1997 a Writ of Execution directing Sheriff Juan A. Gato (Gato) to satisfy the judgment for attorney's fees in the amount of P9,000,000.00 in favor of petitioners.

On 23 October 1997, Sheriff Gato served notice that the rights, shares, interests and participation of the Heirs of Bancale in the subject properties were being levied on execution to satisfy the Writ of Execution dated 14 October 1997. This was done despite the fact that the Writ of Execution issued by the trial court specifically directed that the attorney's fees were "to be taken from the money due from the buyer to the sellers under the agreement to buy and sell." Thereafter, Sheriff Gato issued a Notice of Sale on Execution dated 24 October 1997, announcing that the subject properties were to be sold at a public auction on 28 November 1997 at 2:00 p.m.

On 18 November 1997, respondents filed a Third Party Claim with the office of Sheriff Gato. On motion of petitioners, the Lapu-Lapu City RTC, Branch 27 fixed the sheriff's indemnity bond at P500,000.00.

On 28 November 1997, the subject properties were sold at public auction to petitioners for P9,000,000.00. The sale was registered on 3 December 1997.

On 1 December 1998, the Lapu-Lapu City RTC, Branch 27, under a new presiding judge, issued an Order resolving the Motions of the Heirs of Bancale seeking reconsideration of the previous Orders of the same court dated 22 September 1997 and 10 October 1997, and disposing thus:

WHEREFORE, in view of the foregoing premises, this Court hereby sets aside the order issued in this case on October 10, 1997 which considered as final and executory the August 26, 1997 order and, in its stead, hereby gives due course to the appeal filed by the [Heirs of Bancale] from the order issued in this case on September 22, 1997, which in effect is an appeal from the said August 26, 1997 order.[4]

This 1 December 1998 Order is currently on appeal with the Nineteenth Division of the Court of Appeals, where it is docketed as CA- G.R. CEB CV No. 61696. The Court of Appeals Resolutions granting due course to said appeal were elevated via a Petition for Certiorari, docketed as G.R. No. 156011, still pending before this Court.

On 27 January 1999, petitioners wrote a letter to Sheriff Gato requesting him to execute a final deed of sale in

their favor since no redemption of the subject properties was made. Sheriff Gato, in a letter dated 4 February 1999, answered that he no longer had any authority to issue the final deed of sale by virtue of the 1 December 1998 Order of the Lapu-Lapu City RTC, Branch 27. Nonetheless, in direct contravention of the contents of his letter, Sheriff Gato still transmitted to petitioners the final Deed of Conveyance without the approval of the trial court.

CASE No. 2: Espina v. Gato, A.M.

No. P-02-1580, Supreme Court

The second case is an administrative complaint filed against Sheriff Gato by respondents, for allegedly acting with manifest bias and partiality in Civil Case No. 2309-L while it was still pending with the Lapu-Lapu City RTC, Branch 27. On 9 April 2003, this Court, speaking through Associate Justice Adolfo Azcuna, held:

Firstly, the haste with which respondent levied upon the plaintiffs' property is unexplained. Furthermore, despite a third-party claim filed by complainant Espina for CDPI on November 18, 1997, the property was sold at public auction to Attys. Juaban and Zosa on November 28, 1997. It is true that sheriffs are responsible for the prompt service and implementation of writs and other orders issued by the court. They cannot afford to be inefficient in the work assigned to them. However, prompt service and efficiency should not be reasons to compromise the integrity of the court and the proper administration of justice. By the very nature of their duties, sheriffs perform a very sensitive function in the dispensation of justice. Thus, their conduct must, at all times, be above suspicion.

Secondly, as stated earlier, the trial court ordered in the writ of execution that the P9 million to be paid to Attys. Juaban and Zosa as attorneys' fees "be taken from the money due from the buyer to the sellers under the agreement to buy and sell." Nevertheless, respondent levied upon the aforementioned property in blatant disregard of this order. It is a well-settled rule that the duty of a sheriff is merely ministerial. When a writ is placed in the hands of the sheriff, it is his ministerial duty to proceed to execute in accordance with the terms of its mandate.

Thirdly, when Attys. Juaban and Zosa requested respondent to issue a Final Deed of Conveyance to them, respondent already knew that he no longer had authority to issue the same. He had already been apprised of the fact that a subsequent order, dated December 1, 1998, set aside the orders that were the basis of the writ of execution. This was admitted by him in his letter to Attys. Juaban and Zosa. Despite this knowledge, he still issued a final deed of sale in favor of the said lawyers without the approval of the court.

From all these facts, it is clear that respondent showed manifest partiality in favor of Attys. Juaban and Zosa, giving them unwarranted benefit, advantage and preference and that, with evident bad faith, he caused undue injury to complainants. Respondent thereby failed to comply with the strict standards required of public officers and employees.

WHEREFORE, respondent Sheriff Juan Gato is found GUILTY of grave abuse of official functions and manifest partiality amounting to grave misconduct and conduct prejudicial to the administration of justice, and is hereby SUSPENDED FROM SERVICE FOR THREE (3) MONTHS WITHOUT PAY, with the warning that repetition in the future of the same or similar misconduct will be dealt with more severely.[5]

CASE No. 3: Espina v. Gato, Civil

Case No. 4871-L, Lapu-Lapu City

RTC, Branch 54

On 28 November 1997, respondents filed a complaint for injunction and damages with an application for the issuance of a temporary restraining order to enjoin, at whatever stage, the sale in a public auction of the subject properties by Sheriff Gato. Said complaint was docketed as Civil Case No. 4871-L before the Lapu-Lapu City

RTC, Branch 54. Respondents claim that they were, as of the institution of said case, unaware that the subject properties had already been sold at a public auction.

On 19 December 1997, petitioners filed a Motion to Dismiss, which was granted by the Lapu-Lapu City RTC, Branch 54, in an Order dated 30 July 1998. On 2 September 1998, respondents filed a Notice of Appeal, which was given due course by the Lapu-Lapu City RTC, Branch 54, in an Order dated 7 September 1998.

Respondents' appeal before the Court of Appeals was docketed as CA-G.R. CV No. 60721. Respondents filed therein an Urgent Motion for Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction dated 19 October 1998. On 26 November 1998, the Court of Appeals issued a Resolution granting respondents' application for the issuance of a temporary restraining order, restraining Sheriff Gato from consolidating ownership over the subject properties in favor of petitioners.

On 1 December 1998, respondents filed an Urgent Manifestation/Motion dated 1 December 1998 wherein they tendered the amount of P10,962,347.20 as payment for the redemption price of the subject properties, on the condition that if the application for preliminary injunction was denied or if the case is finally resolved in favor of petitioners, the said amount shall be considered as valid tender of the redemption price of the subject properties retroacting to the date of the filing of the Manifestation/Motion. In a comment dated 17 December 1998, petitioners interposed no objection to the deposit of said amount, but excepted to respondents' claim that the tender would stop the running of interest on the redemption price.

On 15 June 1999, the Court of Appeals issued a Resolution stating that respondents' application for a writ of preliminary injunction to enjoin Sheriff Gato from consolidating ownership over the subject properties in favor of petitioners had been rendered moot in view of the 1 December 1998 Order by the Lapu-Lapu City RTC, Branch 27, in Civil Case No. 2309-L setting aside its Order dated 10 October 1997 and giving due course to respondents' appeal therein.

In the meantime, petitioners were able to acquire the Definite Deed of Sale of the subject properties from Sheriff Gato. Hence, respondents filed a Motion for Clarification and/or Reconsideration to Cite [Petitioners] in Contempt. Petitioners, however, proceeded to register the Definite Deed of Sale issued by Sheriff Gato with the Register of Deeds in Lapu-Lapu City.

In a Resolution dated 30 September 1999, the Court of Appeals granted respondents' application for a writ of preliminary injunction and enjoined petitioners from exercising rights of ownership over the subject properties, such as alienating or encumbering the same.

On 31 January 2005, the Court of Appeals rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, the Order dated July 30 1998 issued by the Regional Trial Court, Branch 54, Lapu-Lapu City, in Civil Case No. 4871-L dismissing the complaint, is hereby REVERSED and SET ASIDE.

The Writ of Preliminary Injunction issued pursuant to the Court's resolution promulgated on September 30, 1999, subject to the conditionalities therein, is hereby made PERMANENT.

The Regional Trial Court, Branch 54, Lapu-Lapu City is directed to undertake further proceedings in Civil Case No. 4871-L so far as the issue on damages is concerned.

Costs against appellees.[6]

Petitioners' Motion for Reconsideration of the foregoing decision was denied in a Resolution dated 20 September 2005. Hence, the present recourse, wherein petitioners bring forth the following issues for this Court's consideration:

- Whether or not Rene Espina had a cause of action to file the Injunction and Damages Case against petitioners;
- Whether or not the trial court acquired jurisdiction over the complaint and over CDPI in said case;
- Whether or not only questions of law were raised in respondents' appeal, which allegedly required the Court of Appeals to dismiss said appeal;
- Whether or not the Court of Appeals erred in taking cognizance of the records in another case which were not offered and admitted as evidence as basis for its findings of facts;
- Whether or not the Court of Appeals erred in issuing a permanent injunction against petitioners considering that there was allegedly no prayer in the complaint therefor.

We find no merit in the present Petition.

Authority of Rene Espina to File the
Case and the Jurisdiction of the RTC

Only respondent Espina signed the Verification and Certification of Non-Forum Shopping attached to the complaint in the third case, Civil Case No. 4178-L, before the Lapu-Lapu City RTC, Branch 54; and apart from him, there was no signatory of the Verification and Certification of Non-Forum Shopping on behalf of respondent CDPI. Petitioners claim that the complaint should have been dismissed by the trial court since (1) respondent Espina had no more personal interest in the case, having assigned his rights to the subject properties to respondent CDPI; and (2) there was no authority or board resolution authorizing respondent Espina to file the complaint on behalf of his co-respondent CDPI.

Sec. 2, Rule 3 of the Rules of Court requires that parties to a civil case must be real parties in interest, to wit:

SEC. 2. Parties in interest.--A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

We quote with approval the following ruling of the Court of Appeals on the issue of respondent Espina's personality to institute Civil Case No. 4178-L:

The personality of appellant Rene Espina to sue in his personal capacity finds basis in the Agreement to Sell and to Buy. It is readily apparent in the Agreement that he has been designated as the "Second Party", in his personal capacity, and not as agent or representative of a corporate entity. On the other hand, the Deed of Sale which was subsequently executed, is based on the aforesaid Agreement. Therefore, there is no gainsaying that appellant Rene Espina has a personal interest in the case.[7]

Respondents' right to the subject properties is based on the 31 January 1997 Agreement to Sell and to Buy executed between the Heirs of Bancale and respondent Espina. Hence, the said Agreement is the very source of the right, the violation of which constituted the cause of action in respondents' complaint for injunction before the court a quo. It was respondent Espina who entered into the Agreement, and his rights as a party to the said contract were not extinguished just because he designated his co-respondent CDPI as vendee of the subject properties, pursuant to the authority given to him in paragraph 5 thereof. Among respondent Espina's rights as a party to the Agreement is his right to the full realization of the purpose of the contract, which in this case, would be the transfer of the ownership of the subject properties from the Heirs of Bancale either to him or to his designated vendee. The public auction sale of the subject properties to petitioners would not only prevent the intended transfer of ownership under the Agreement, but would also render inutile respondent Espina's designation of respondent CPDI as a vendee. Moreover, it was undisputed that respondent Espina advanced

P2,000.000 to the Heirs of Bancale, which formed part of the consideration for the ensuing sale of the subject properties. There was no proof that respondent Espina had already been reimbursed for the said amount. Having paid part of the purchase price for the subject properties, then respondent Espina has an interest therein.

Having been established as a real party in interest, respondent Espina has not only the personality to file the complaint in Civil Case No. 4178-L, but also the authority to sign the certification against forum shopping as a plaintiff therein. We held in *Mendigorin v. Cabantog*,^[8] *Escorpizo v. University of Baguio*^[9] and *Condo Suite Club Travel, Inc. v. National Labor Relations Commission*^[10] that the certification against forum shopping must be signed by the plaintiff or any of the principal parties and not by counsel.^[11] We have also held in *Cua v. Vargas*,^[12] that:

The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs or petitioners in a case and the signature of only one of them is insufficient. Nevertheless, the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert their own ultimate and legitimate objective. Strict compliance with the provisions regarding the certificate of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.

Thus, when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules.

In *Bases Conversion and Development Authority v. Uy*,^[13] we held:

Signature of a principal party sufficient for verification and certification

Anent the assailed verification and certification of non-forum shopping, it is shown that it substantially complied with the requirements of the Rules. Dismissal of appeals that is purely on technical grounds is frowned upon. While only petitioner Ramon P. Ereneta signed the verification and certification of non-forum shopping such is not fatal to the instant petition. In *Calo*, we agreed with petitioners that the signature of only one petitioner in the verification and certification of non-forum shopping satisfies the requirement under Section 2, Rule 42 of the Revised Rules on Civil Procedure. In *Calo*, we relied on *Condo Suite Club Travel, Inc., v. NLRC*--where we ruled that the certification of non-forum shopping may be signed not only by the petitioners but also any of the principal parties. In the instant case, Mr. Ramon P. Ereneta, a member of the Investment Committee of the Heritage Park Management Corporation, is a principal party in the instant case having been impleaded in Civil Case No. 99-0425 pending in the RTC.

More so, in *Calo*, we also cited *Cavile, et al. v. Heirs of Clarita Cavile, et. al.*--where we held that there was substantial compliance with the Rules when only petitioner Thomas George Cavile, Sr. signed in behalf of all the other petitioners of the certificate of non-forum shopping as the petitioners, being relatives and co-owners of the properties in dispute, shared a common interest in them, had a common defense in the complaint for partition, and filed the petition as a collective, raising only one argument to defend their rights over the properties in question. We reasoned that there was sufficient basis for Cavile, Sr., to speak for and in behalf of his co-petitioners, stating that they had not filed any action or claim involving the same issues in another court or tribunal, nor was there other pending action or claim in another court or tribunal involving the same issues. In the same vein, this is also true in the instant case where petitioners have filed their petition as a collective, sharing a common interest and having a common single defense.

Thus, the certificate against forum shopping is not rendered invalid by the absence of the signature of an authorized official of respondent CDPI. The signature of respondent Espina as one of the plaintiffs therein suffices.

Furthermore, the allegation concerning the defect in the Certificate against Forum Shopping was raised for the first time on appeal. The Motion to Dismiss filed by petitioners was based only on the following grounds:

I - That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

II - That there is another cause of action pending between the parties for the same cause;

III - That plaintiff Rene Espina has no legal capacity to sue.[14]

The grounds alleged by petitioners and ruled upon by the trial court are thus (1) extinguishment, (2) *litis pendentia*, and (3) lack of legal capacity to sue on the part of Rene Espina. Of these grounds, only *litis pendentia* is related to the present allegation of petitioners concerning the defect in the Certification against Forum Shopping. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. However, forum shopping as a ground for the dismissal of actions is distinct and separate from the failure to submit a proper Certificate against Forum Shopping. One need not be held liable for forum shopping for his complaint to be dismissed on the ground of an absence or a defect in the Certificate against Forum Shopping. Conversely, one can be liable for forum shopping regardless of the presence or absence of a Certification against Forum Shopping. The presence of a Certification in such a case would only have the effect of making the person committing forum shopping additionally liable for perjury. Thus, we held in *Spouses Melo v. Court of Appeals*[15]:

Indeed, compliance with the certification against forum shopping is separate from, and independent of, the avoidance of forum shopping itself. Thus, there is a difference in the treatment - in terms of impossible sanctions - between failure to comply with the certification requirement and violation of the prohibition against forum shopping. x x x.

There being no allegation of a defect in the Certification against Forum Shopping on the part of respondents, neither the RTC nor the Court of Appeals was able to rule thereon. Both courts only ruled on the issue concerning *litis pendentia*, on which the Court of Appeals correctly held that:

Litis pendentia is not present in this case vis-à-vis Civil Case No. 2309-L. The requisites of *litis pendentia* are: (a) identity of parties, or at least such parties who represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the present case, regardless of which party is successful, would amount to *res judicata* in another case.

The appellants herein are not parties in Civil Case No. 2309-L. There is no identity of rights asserted and reliefs prayed for. Civil Case No. 2309 is for recovery of ownership and possession; while the instant case is for injunction and damages. The judgment in one will not be a bar to the other case. These cases were conjoined only because of the incident in Civil Case No. 2309-L, i.e. the fixing of the attorney's fees and the subsequent execution on the subject properties which were, in the meantime, sold to and purchased by the appellants pursuant to an Agreement to Sell and to Buy.

Appellees' charge that appellants are guilty of forum shopping is without legal basis. It has been held that "where the elements of *litis pendentia* are not present or where final judgment in one will not amount to *res judicata* in the other, there is no forum shopping.[16]

Propriety of the Mode of Appeal

Petitioners also claim that since only questions of law were raised in respondents' appeal to the Court of Appeals, the proper remedy should have been a Petition for Review filed directly with this Court under Rule 45 of the

Rules of Court.

Petitioners cite the Assignment of Errors raised by respondents before the Court of Appeals in CA-G.R. CV No. 60721:

ASSIGNMENT OF ERRORS

I. The court a quo erred in dismissing the complaint on the ground of *litis pendentia*.

II. The court a quo erred in dismissing the complaint on the ground that the appellant Rene Espina has no legal capacity to sue.

III. The court a quo should have issued a temporary restraining order, and after due hearing should have issued an injunction to enjoin appellee Sheriff Gato from erroneously levying on and selling at public auction the Subject Property to satisfy the Writ of Execution dated 14 October 1997 issued by the Trial Court in Civil Case No. 2309-L.

Petitioners contend that since no evidence was presented by the parties in the lower court, the complaint having been dismissed on the timely motion by the petitioners, the appeal of the dismissal of the complaint required no determination by the appellate court of the probative value of the evidence presented by the parties.

The Court of Appeals addressed this issue, thus:

Appellees [Juaban and Espina] contend that since the assignment of errors raises only questions of law, the proper course of action is a Petition for Review direct to the Supreme Court in accordance with Rule 45, Revised Rules of Court. The appellees unduly limit themselves to the assignment of errors in the appeal and close their eyes to the glaring fact that, from the narration of facts above, certain acts taken by RTC Br. 27 before then Presiding Judge Risos, which are immoral, devious, and patently illegal, has constrained the Court to take a second look at the circumstances which gave rise to the instant appeal. As succinctly observed by the Court in its Resolution on appellant's prayer for the issuance of a writ of preliminary injunction, However, inspite full knowledge that the appeal has been given due course and that therefore there is no more basis for further action on the execution sale, appellees Zosa and Juaban caused the consolidation of ownership and the issuance of new titles in their names. Said appellees are even aware that the redemption money for the properties in the sum of P10,962,347.20 has been deposited with this Court by the appellants. In fact, appellees when asked to comment on the deposit, manifested that they have no objection to the deposit although they disagreed that interest or the redemption price would stop running.

"It is therefore without legal basis that notwithstanding those circumstances, the appellees, upon expiration of the temporary restraining order issued by this Court, immediately asked for the execution of a deed of sale in their favor `since no redemption has been made' and managed to obtain titles in their names. Such consolidation of ownership is patently erroneous as the decision granting them attorney's fees is not yet final and executory and is in fact the subject of appeal in this Court under CA-GR CV No. 61696." [17]

We have held in *Microsoft Corporation v. Maxicorp, Inc.* [18] and *Morales v. Skills International Company*, [19] that:

The distinction between questions of law and questions of fact is settled. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. Though this delineation seems simple, determining the true nature and extent of the distinction is sometime problematic. For example, it is incorrect to presume that all cases where the facts are not in dispute automatically involve purely questions of law.

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on a

given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.

In the fairly recent case of *First Bancorp Inc. v. Court of Appeals*,^[20] we discussed the implications of the allegation by a party of the lack of jurisdiction of the Court of Appeals based on the ground that the appeal was based solely on questions of law:

If the aggrieved party appeals by writ of error under Rule 41 of the Rules of Court to the CA and it turns out, from the brief of appellant, that only questions of law are raised, the appeal shall be dismissed:

Sec. 2. Dismissal of improper appeal to the Court of Appeals. - An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

The nature of the issues to be raised on appeal can be gleaned from the appellant's notice of appeal filed in the trial court and in his or her brief as appellant in the appellate court.

The provision relied upon by respondent, Section 15, Rule 44 of the Rules of Court, reads:

Sec. 15. Questions that may be raised on appeal. - Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

This rule, however, does not relate to the nature of the issues that may be raised on appeal by the aggrieved party, whether issues of fact or issues of law, or the mode of appeal of the aggrieved party from a final order or resolution of the trial court in the exercise of its original jurisdiction; it merely provides the nature of the issues appellant may include in his assignment of error incorporated in his Brief as appellant. It may happen that the appellant may have raised in the trial court errors of fact or law or both, and need not include all said issues in his appeal in the appellate court. The appellant has the right to choose which issues of law he or she may raise in the CA in addition to factual issues already raised.

A question of fact exists when a doubt or difference arises as to the truth or falsity of alleged facts. If the query requires a reevaluation of the credibility of witnesses or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. On the other hand, there is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants. In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances. Ordinarily, the determination of whether an appeal involves only questions of law or both questions of law and fact is best left to the appellate court. All doubts as to the correctness of the conclusions of the appellate court will be resolved in favor of the CA unless it commits an error or commits a grave abuse of discretion.

In case of doubt, therefore, the determination of the Court of Appeals of whether an appeal involves only questions of law or both questions of law and fact shall be affirmed. As explained by the Court of Appeals, it was only after the appellate court's painstaking review of the facts surrounding the dispute that the "immoral, devious and patently illegal" acts which attended the transfer of the subject properties to petitioners were brought to light. This Court finds no error or grave abuse of discretion on the part of the Court of Appeals in making the aforesaid

finding. No less than this Court, in the second case, A.M. No. P-02-1580, found that Sheriff Gato "showed manifest partiality in favor of Attys. Juaban and Zosa, giving them unwarranted benefit, advantage and preference and that, with evident bad faith, he caused undue injury to complainants [Espina and CDPI]." [21] Irrefragably, respondents' appeal before the Court of Appeals involved not only questions of law, because for the determination thereof, the appellate court was first called upon to make its own findings of facts which were significant to its complete and judicious resolution of the appeal.

Taking Cognizance of Records in Another Case

Petitioners claim that the Court of Appeals, in resolving CA-G.R. CV No. 60721, the appeal of the dismissal of Civil Case No. 4178-L by Lapu-Lapu City RTC, Branch 54, erred in taking cognizance of the records in another case as basis for its findings of facts. According to petitioners, the Court of Appeals based its findings of facts on the records of the first case, Civil Case No. 2309-L, pending before another Branch (Branch 27) of the RTC of Lapu-Lapu City.

In *Bongato v. Malvar*, [22] we held:

Second, as a general rule, courts do not take judicial notice of the evidence presented in other proceedings, even if these have been tried or are pending in the same court or before the same judge. There are exceptions to this rule. Ordinarily, an appellate court cannot refer to the record in another case to ascertain a fact not shown in the record of the case before it, yet, it has been held that it may consult decisions in other proceedings, in order to look for the law that is determinative of or applicable to the case under review. In some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases "may be so closely interwoven, or so clearly interdependent, as to invoke" a rule of judicial notice.

We find that the circumstances in Case No. 1 (Civil Case No. 2309-L) are too closely interwoven and so clearly interdependent with those in Case No. 3 (Civil Case No. 4178-L). Petitioners and respondents are claiming the very same subject properties. Case No. 3, the case at bar, calls for a determination of who has the superior right to the subject properties, petitioners or respondents. Petitioners are the ones who actually rely on Case No. 1 because their right to the subject properties is rooted in the proceedings therein. It should be recalled that they served as the counsels of the Heirs of Bacale in Case No. 1; they had the subject properties sold at a public auction to satisfy the award in their favor of attorney's fees; and they were the successful bidders at the auction. Petitioners cannot insist on their right to the subject properties, yet prevent the Court of Appeals from looking into the basis or source of said right, as well as the circumstances surrounding their acquisition of the same. They cannot invoke orders, rulings or findings of the trial court in Case No. 1 which are supportive of their right to the subject properties but suppress those which are damaging.

Even assuming for the sake of argument that the proceedings in Case No. 1 cannot be stated in our narration of facts on the ground that said proceedings have not yet been terminated, there is certainly nothing that prevents us from consulting Case No. 2 (A.M. No. P-02-1580) wherein Sheriff Gato was suspended by this Court for acting with "grave abuse of official functions and manifest partiality amounting to grave misconduct and conduct prejudicial to the administration of justice" in selling to petitioners the subject properties at a public auction despite respondents' third-party claim. It bears to emphasize that Case No. 2 has already been decided with finality by this Court.

Lack of Prayer for the Issuance of a Permanent Injunction

Petitioners argue that the respondents did not make any allegation in their Complaint that they were the owners of the disputed properties and there was no prayer in their Complaint for the issuance of a permanent injunction against petitioners prohibiting them from exercising acts of ownership.

An inspection of respondents' Complaint, however, reveals that petitioners actually alleged ownership of the property in dispute:

The defendants are doing, threatening, and/or attempting to conduct the said public auction sale which is in violation of the rights of the plaintiffs, as the property sought to be sold now belong to the plaintiffs, and not of Concordia Bancale et. al., and this tends to render whatever favorable judgment the Honorable Court may grant to the plaintiffs ineffectual.[23]

As regards the alleged lack of prayer for the court to issue a permanent injunction prohibiting petitioners from exercising acts of ownership, it is necessary to examine the actual Prayer made by the respondents in their Complaint, which reads:

WHEREFORE, plaintiffs most respectfully pray this Honorable Court, that upon filing of this complaint, a temporary restraining order be issued enjoining defendants from proceeding with the auction sale, or at whatever stage it is, of Lot 6720-C-2 of the subdivision plan Psd-07-05-012144, containing an area of 13,677 sq. meters and covered by Transfer Certificate of Title No. 36425 and Lot No. 6720-B-2 of the same subdivision plan, containing an area of 4,560 sq. meters and covered by Transfer Certificate of Title No. 36426, all located at Lapulapu City, and upon notice to all the concerned, to issue the writ of preliminary injunction for the same purpose;

After trial on the merits to make the injunction permanent, and to order the defendants, jointly and severally:

- To reimburse the plaintiffs, jointly and severally the sum of P35,000,000.00 representing the purchase price of the properties, subject matter of this case, which were already paid by the plaintiffs to the Bancales;
- To pay the plaintiffs the sum of P5,000,000.00 for moral damages;
- To reimburse plaintiffs the sum of P20,000.00 for attorney's fees, plus the sum of P2,000.00 per court appearance, and the sum of P20,000.00 for litigation expenses;

Plaintiffs further pray for such orders as may be just, appropriate and equitable under the premises.[24]

We hold that the issuance by the Court of Appeals of a permanent injunction prohibiting petitioners from exercising acts of ownership is included in respondent's prayer for such orders as may be just and equitable under the circumstances. Such a prayer in the complaint justifies the grant of a relief not otherwise specifically prayed for.[25] More importantly, we have ruled that it is the allegations in the pleading which determine the nature of the action and the Court shall grant relief warranted by the allegations and proof even if no such relief is prayed for.[26] It is the material allegations of the fact in the complaint, not the legal conclusions made in the prayer, that determine the relief to which the plaintiff is entitled.[27] If respondents were seeking to enjoin the sale of the subject properties, in effect, to prevent the transfer of ownership of the subject properties to others, then such prayer must be deemed to logically and reasonably include the prayer to enjoin others from exercising rights of ownership over the subject properties, for if the ownership of the subject properties are not transferred to any one else, then no one else has the right to exercise the rights appurtenant thereto.

WHEREFORE, the Petition is DENIED. The Decision dated 31 January 2005 of the Court of Appeals in CA-G.R. CV No. 60721 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Vicente L. Yap with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos, concurring; rollo, pp. 24-31.

[2] Rollo, p. 142.

[3] Id. at 195.

[4] Id. at 253.

[5] Espina v. Gato, 449 Phil. 7, 13-15 (2003).

[6] Rollo, p. 30.

[7] Id. at 30.

[8] 436 Phil. 483, 491 (2002).

[9] 366 Phil. 166, 175 (1999).

[10] 380 Phil. 660, 667 (2000).

[11] See also San Miguel Corporation v. Aballa, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 411; Estribillo v. Department of Agrarian Reform, G.R. No. 159674, 30 June 2006, 494 SCRA 218, 228.

[12] G.R. No. 156536, 31 October 2006, 506 SCRA 374, 389-390.

[13] G.R. No. 144062, 2 November 2006, 506 SCRA 524, 535-536.

[14] Petitioners' Motion to Dismiss, Records, p. 19.

[15] 376 Phil. 204, 213 (1999).

[16] Rollo, p. 29.

[17] Id. at 28.

[18] G.R. No. 140946, 13 September 2004, 438 SCRA 224, 230-231.

[19] G.R. No. 149285, 30 August 2006, 500 SCRA 186, 194.

[20] G.R. No. 151132, 22 June 2006, 492 SCRA 221, 236-238.

[21] Espina v. Gato, supra note 5.

[22] 436 Phil. 109, 117-118 (2002).

[23] Complaint, Civil Case No. 4871-L; rollo, p. 273.

[24] Rollo, pp. 278-279.

[25] Primelink Properties and Development Corporation v. Lazatin-Magat, G.R. No. 167379, 27 June 2006, 493 SCRA 444, 466.

[26] Banco Filipino Savings and Mortgage Bank v. Court of Appeals, 388 Phil. 27 (2000).

[27] Arroyo, Jr. v. Taduran, 466 Phil. 173 (2004).

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