

**PENTACAPITAL INVESTMENT CORPORATION, PETITIONER, VS.
MAKILITO B. MAHINAY, RESPONDENT.***G.R. No. 171736. July 05, 2010*

Ponente: NACHURA, J.

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Before us are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court filed by petitioner Pentacapital Investment Corporation. In G.R. No. 171736, petitioner assails the Court of Appeals (CA) Decision[1] dated December 20, 2005 and Resolution[2] dated March 1, 2006 in CA-G.R. SP No. 74851; while in G.R. No. 181482, it assails the CA Decision[3] dated October 4, 2007 and Resolution[4] dated January 21, 2008 in CA-G.R. CV No. 86939.

The Facts

Petitioner filed a complaint for a sum of money against respondent Makilito Mahinay based on two separate loans obtained by the latter, amounting to P1,520,000.00 and P416,800.00, or a total amount of P1,936,800.00. These loans were evidenced by two promissory notes[5] dated February 23, 1996. Despite repeated demands, respondent failed to pay the loans, hence, the complaint.[6]

In his Answer with Compulsory Counterclaim,[7] respondent claimed that petitioner had no cause of action because the promissory notes on which its complaint was based were subject to a condition that did not occur.[8] While admitting that he indeed signed the promissory notes, he insisted that he never took out a loan and that the notes were not intended to be evidences of indebtedness.[9] By way of counterclaim, respondent prayed for the payment of moral and exemplary damages plus attorney's fees.[10]

Respondent explained that he was the counsel of Ciudad Real Development Inc. (CRDI). In 1994, Pentacapital Realty Corporation (Pentacapital Realty) offered to buy parcels of land known as the Molino Properties, owned by CRDI, located in Molino, Bacoar, Cavite. The Molino Properties, with a total area of 127,708 square meters, were sold at P400.00 per sq m. As the Molino Properties were the subject of a pending case, Pentacapital Realty paid only the down payment amounting to P12,000,000.00. CRDI allegedly instructed Pentacapital Realty to pay the former's creditors, including respondent who thus received a check worth P1,715,156.90.[11] It was further agreed that the balance would be payable upon the submission of an Entry of Judgment showing that the case involving the Molino Properties had been decided in favor of CRDI.[12]

Respondent, Pentacapital Realty and CRDI allegedly agreed that respondent had a charging lien equivalent to 20% of the total consideration of the sale in the amount of P10,277,040.00. Pending the submission of the Entry of Judgment and as a sign of good faith, respondent purportedly returned the P1,715,156.90 check to Pentacapital Realty. However, the Molino Properties continued to be haunted by the seemingly interminable court actions initiated by different parties which thus prevented respondent from collecting his commission.

On motion[13] of respondent, the Regional Trial Court (RTC) allowed him to file a Third Party Complaint[14]

against CRDI, subject to the payment of docket fees.[15]

Admittedly, respondent earlier instituted an action for Specific Performance against Pentacapital Realty before the RTC of Cebu City, Branch 57, praying for the payment of his commission on the sale of the Molino Properties.[16] In an Amended Complaint,[17] respondent referred to the action he instituted as one of Preliminary Mandatory Injunction instead of Specific Performance. Acting on Pentacapital Realty's Motion to Dismiss, the RTC dismissed the case for lack of cause of action.[18] The dismissal became final and executory.

With the dismissal of the aforesaid case, respondent filed a Motion to Permit Supplemental Compulsory Counterclaim.[19] In addition to the damages that respondent prayed for in his compulsory counterclaim, he sought the payment of his commission amounting to P10,316,640.00, plus interest at the rate of 16% per annum, as well as attorney's fees equivalent to 12% of his principal claim.[20] Respondent claimed that Pentacapital Realty is a 100% subsidiary of petitioner. Thus, although petitioner did not directly participate in the transaction between Pentacapital Realty, CRDI and respondent, the latter's claim against petitioner was based on the doctrine of piercing the veil of corporate fiction. Simply stated, respondent alleged that petitioner and Pentacapital Realty are one and the same entity belonging to the Pentacapital Group of Companies.[21]

Over the opposition of petitioner, the RTC, in an Order[22] dated August 22, 2002, allowed the filing of the supplemental counterclaim. Aggrieved, petitioner sought recourse in the CA through a special civil action for certiorari, seeking to reverse and set aside the RTC Order. The case was docketed as CA-G.R. SP No. 74851. On December 20, 2005, the CA rendered the assailed Decision dismissing the petition.[23] The appellate court sustained the allowance of the supplemental compulsory counterclaim based on the allegations in respondent's pleading. The CA further concluded that there was a logical relationship between the claims of petitioner in its complaint and those of respondent in his supplemental compulsory counterclaim. The CA declared that it was inconsequential that respondent did not clearly allege the facts required to pierce the corporate separateness of petitioner and its subsidiary, the Pentacapital Realty.[24]

Petitioner now comes before us in G.R. No. 171736, raising the following issues:

A.

WHETHER RESPONDENT MAHINAY IS BARRED FROM ASSERTING THE CLAIM CONTAINED IN HIS "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" ON THE GROUNDS OF (1) RES JUDICATA, (2) WILLFUL AND DELIBERATE FORUM SHOPPING, AND (3) FAILURE TO INTERPOSE SUCH CLAIM ON TIME PURSUANT TO SECTION 2 OF RULE 9 OF THE RULES OF COURT;

B.

WHETHER RESPONDENT MAHINAY'S SUPPLEMENTAL COMPULSORY COUNTERCLAIM IS ACTUALLY A THIRD-PARTY COMPLAINT AGAINST PENTACAPITAL REALTY, THE INTRODUCTION OF WHICH REQUIRES THE PAYMENT OF THE NECESSARY DOCKET FEES;

C.

ASSUMING FOR THE SAKE OF PURE ARGUMENT THAT IT IS PROPER TO PIERCE THE CORPORATE VEIL AND TO ALLOW RESPONDENT MAHINAY TO LODGE A "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" AGAINST HEREIN PETITIONER PENTACAPITAL INVESTMENT FOR AN ALLEGED OBLIGATION OF ITS SUBSIDIARY, PENTACAPITAL REALTY, ON THE THEORY THAT THEY ARE "ONE AND THE SAME COMPANY," WHETHER PENTACAPITAL REALTY SHOULD HAVE AT LEAST BEEN MADE A PARTY TO THE CASE AS RULED BY THIS HONORABLE COURT IN FILMERCO COMMERCIAL CO., INC. VS. INTERMEDIATE APPELLATE

COURT;

D.

WHETHER RESPONDENT MAHINAY SHOULD BE ALLOWED TO PRESENT EVIDENCE ON HIS SO-CALLED "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" INASMUCH AS (1) RESPONDENT MAHINAY'S PLEADINGS ARE BEREFT OF ANY ALLEGATIONS TO BUTTRESS THE MERGING OF PENTACAPITAL REALTY AND PENTACAPITAL INVESTMENT INTO ONE ENTITY AND THE CONSEQUENT IMPUTATION ON THE LATTER OF THE FORMER'S SUPPOSED LIABILITY ON RESPONDENT MAHINAY'S SUPPLEMENTAL COMPULSORY COUNTERCLAIM, AND (2) THE INCIDENTS ALLEGEDLY PERTAINING TO, AND WHICH WOULD THEREBY SUPPORT, THE PIERCING OF CORPORATE VEIL ARE NOT EVIDENTIARY MATTERS MATERIAL TO THE PROCEEDINGS BEFORE THE COURT A QUO CONSIDERING THAT THE SAME ARE BEYOND THE SCOPE OF THE PLEADINGS;

E.

WHETHER THE DOCTRINE OF PIERCING THE CORPORATE VEIL MAY BE INVOKED AND APPLIED IN ORDER TO EVADE AN OBLIGATION AND FACILITATE PROCEDURAL WRONGDOING; AND

F.

WHETHER PETITIONER PENTACAPITAL INVESTMENT COMMITTED FORUM SHOPPING WHEN IT FILED THE PRESENT PETITION DURING THE PENDENCY OF THE MOTION FOR RECONSIDERATION IT FILED BEFORE THE COURT A QUO AND, SUBSEQUENTLY, OF THE APPEAL BEFORE THE COURT OF APPEALS TO QUESTION THE JUDGMENT OF THE COURT A QUO.[25]

There being no writ of injunction or Temporary Restraining Order (TRO), the proceedings before the RTC continued and respondent was allowed to present his evidence on his supplemental compulsory counterclaim. After trial on the merits, the RTC rendered a decision[26] dated March 20, 2006, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, plaintiff's complaint is hereby ordered dismissed for lack of merit. This court, instead, finds that defendant was able to prove by a clear preponderance of evidence his cause of action against plaintiff as to defendant's compulsory and supplemental counterclaims. That, therefore, this court hereby orders the plaintiff to pay unto defendant the following sums, to wit:

- P1,715,156.90 representing the amount plaintiff is obligated to pay defendant as provided for in the deed of sale and the supplemental agreement, plus interest at the rate of 16% per annum, to be computed from September 23, 1998 until the said amount shall have been fully paid;
- Php 10,316,640.00 representing defendant's share of the proceeds of the sale of the Molino property (defendant's charging lien) plus interest at the rate of 16% per annum, to be computed from September 23, 1998 until the said amount shall have been fully paid;
- Php 50,000.00 as attorney's fees based on quantum meruit;
- Php 50,000.00 litigation expenses, plus costs of suit.

This court finds it unnecessary to rule on the third party complaint, the relief prayed for therein being dependent on the possible award by this court of the relief of plaintiff's complaint.[27]

On appeal, the CA, in CA-G.R. CV No. 86939, affirmed in toto the above decision. The CA found no basis for

petitioner to collect the amount demanded, there being no perfected contract of loan for lack of consideration.[28] As to respondent's supplemental compulsory counterclaim, quoting the findings of the RTC, the appellate court held that respondent was able to prove by preponderance of evidence that it was the intent of Pentacapital Group of Companies and CRDI to give him P10,316,640.00 and P1,715,156.90.[29] The CA likewise affirmed the award of interest at the rate of 16% per annum, plus damages.[30]

Unsatisfied, petitioner moved for reconsideration of the aforesaid Decision, but it was denied in a Resolution[31] dated January 21, 2008. Hence, the present petition in G.R. No. 181482, anchored on the following arguments:

A.

Considering that the inferences made in the present case are manifestly absurd, mistaken or impossible, and are even contrary to the admissions of respondent Mahinay, and inasmuch as the judgment is premised on a misapprehension of facts, this Honorable Court may validly take cognizance of the errors relative to the findings of fact of both the Honorable Court of Appeals and the court a quo.

B.

Respondent Mahinay is liable to petitioner PentaCapital Investment for the PhP1,936,800.00 loaned to him as well as for damages and attorney's fees.

1.

The Honorable Court of Appeals erred in concluding that respondent Mahinay failed to receive the money he borrowed when there is not even any dispute as to the fact that respondent Mahinay did indeed receive the PhP1,936,800.00 from petitioner PentaCapital Investment.

2.

The Promissory Notes executed by respondent Mahinay are valid instruments and are binding upon him.

C.

Petitioner PentaCapital Investment cannot be held liable on the supposed "supplemental compulsory counterclaim" of respondent Mahinay.

1.

The findings of fact as well as the conclusions arrived at by the Court of Appeals in its decision were based on mistaken assumptions and on erroneous appreciation of the evidence on record.

2.

There is no evidence on record to support the merging of PentaCapital Realty and petitioner PentaCapital Investment into one entity and the consequent imputation on the latter of the former's supposed liability on respondent Mahinay's supplemental compulsory counterclaim.

3.

Inasmuch as the claim of respondent Mahinay is supposedly against PentaCapital Realty, and considering that petitioner PentaCapital Investment is a separate, distinct entity from PentaCapital Realty, the latter should have been impleaded as it is an indispensable party.

D.

Assuming for the sake of pure argument that it is proper to disregard the corporate fiction and to consider herein petitioner PentaCapital Investment and its subsidiary, PentaCapital Realty, as one and the same entity, respondent Mahinay's "supplemental compulsory counterclaim" must still necessarily fail.

1.

The cause of action of respondent Mahinay, as contained in his "supplemental compulsory counterclaim," is already barred by a prior judgment (*res judicata*).

2.

Considering that the dismissal on the merits by the RTC Cebu of respondent Mahinay's complaint against PentaCapital Realty for attorney's fees has attained finality, respondent Mahinay committed a willful act of forum shopping when he interposed the exact same claim in the proceedings *a quo* as a supposed supplemental compulsory counterclaim against what he claims to be "one and the same" company.

3.

Respondent Mahinay's supplemental compulsory counterclaim is actually a third party complaint against PentaCapital Realty; the filing thereof therefore requires the payment of the necessary docket fees.

E.

The doctrine of piercing the corporate veil is an equitable remedy which cannot and should not be invoked, much less applied, in order to evade an obligation and facilitate procedural wrongdoing.[32]

Simply put, the issues for resolution are: 1) whether the admission of respondent's supplemental compulsory counterclaim is proper; 2) whether respondent's counterclaim is barred by *res judicata*; and (3) whether petitioner is guilty of forum-shopping.

The Court's Ruling**Admission of Respondent's
Supplemental Compulsory Counterclaim**

The pertinent provision of the Rules of Court is Section 6 of Rule 10, which reads:

Sec. 6. Supplemental pleadings. - Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.

As a general rule, leave will be granted to a party who desires to file a supplemental pleading that alleges any material fact which happened or came within the party's knowledge after the original pleading was filed, such being the office of a supplemental pleading. The application of the rule would ensure that the entire controversy might be settled in one action, avoid unnecessary repetition of effort and unwarranted expense of litigants, broaden the scope of the issues in an action owing to the light thrown on it by facts, events and occurrences which have accrued after the filing of the original pleading, and bring into record the facts enlarging or charging the kind of relief to which plaintiff is entitled. It is the policy of the law to grant relief as far as possible for wrongs complained of, growing out of the same transaction and thus put an end to litigation.[33]

In his Motion to Permit Supplemental Compulsory Counterclaim, respondent admitted that, in his Answer with

Compulsory Counterclaim, he claimed that, as one of the corporations composing the Pentacapital Group of Companies, petitioner is liable to him for P10,316,640.00, representing 20% attorney's fees and share in the proceeds of the sale transaction between Pentacapital Realty and CRDI. In the same pleading, he further admitted that he did not include this amount in his compulsory counterclaim because he had earlier commenced another action for the collection of the same amount against Pentacapital Realty before the RTC of Cebu. With the dismissal of the RTC-Cebu case, there was no more legal impediment for respondent to file the supplemental counterclaim.

Moreover, in his Answer with Compulsory Counterclaim, respondent already alleged that he demanded from Pentacapital Group of Companies to which petitioner supposedly belongs, the payment of his 20% commission. This, in fact, was what prompted respondent to file a complaint before the RTC-Cebu for preliminary mandatory injunction for the release of the said amount.

Given these premises, it is obvious that the alleged obligation of petitioner already existed and was known to respondent at the time of the filing of his Answer with Counterclaim. He should have demanded payment of his commission and share in the proceeds of the sale in that Answer with Compulsory Counterclaim, but he did not. He is, therefore, proscribed from incorporating the same and making such demand via a supplemental pleading. The supplemental pleading must be based on matters arising subsequent to the filing of the original pleading related to the claim or defense presented therein, and founded on the same cause of action.[34] Supplemental pleadings must state transactions, occurrences or events which took place since the time the pleading sought to be supplemented was filed.[35]

Even on the merits of the case, for reasons that will be discussed below, respondent's counterclaim is doomed to fail.

Petitioner's Complaint

In its complaint for sum of money, petitioner prayed that respondent be ordered to pay his obligation amounting to P1,936,800.00 plus interest and penalty charges, and attorney's fees. This obligation was evidenced by two promissory notes executed by respondent. Respondent, however, denied liability on the ground that his obligation was subject to a condition that did not occur. He explained that the promissory notes were dependent upon the happening of a remote event that the parties tried to anticipate at the time they transacted with each other, and the event did not happen.[36] He further insisted that he did not receive the proceeds of the loan.

To ascertain whether or not respondent is bound by the promissory notes, it must be established that all the elements of a contract of loan are present. Like any other contract, a contract of loan is subject to the rules governing the requisites and validity of contracts in general. It is elementary in this jurisdiction that what determines the validity of a contract, in general, is the presence of the following elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.[37]

In this case, respondent denied liability on the ground that the promissory notes lacked consideration as he did not receive the proceeds of the loan.

We cannot sustain his contention.

Under Article 1354 of the Civil Code, it is presumed that consideration exists and is lawful unless the debtor proves the contrary.[38] Moreover, under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract.[39] A presumption may operate against an

adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the prima facie case created thereby, and which, if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted.[40]

In the present case, as proof of his claim of lack of consideration, respondent denied under oath that he owed petitioner a single centavo. He added that he did not apply for a loan and that when he signed the promissory notes, they were all blank forms and all the blank spaces were to be filled up only if the sale transaction over the subject properties would not push through because of a possible adverse decision in the civil cases involving them (the properties). He thus posits that since the sale pushed through, the promissory notes did not become effective.

Contrary to the conclusions of the RTC and the CA, we find such proof insufficient to overcome the presumption of consideration. The presumption that a contract has sufficient consideration cannot be overthrown by the bare, uncorroborated and self-serving assertion of respondent that it has no consideration.[41] The alleged lack of consideration must be shown by preponderance of evidence.[42]

As it now appears, the promissory notes clearly stated that respondent promised to pay petitioner P1,520,000.00 and P416,800.00, plus interests and penalty charges, a year after their execution. Nowhere in the notes was it stated that they were subject to a condition. As correctly observed by petitioner, respondent is not only a lawyer but a law professor as well. He is, therefore, legally presumed not only to exercise vigilance over his concerns but, more importantly, to know the legal and binding effects of promissory notes and the intricacies involving the execution of negotiable instruments including the need to execute an agreement to document extraneous collateral conditions and/or agreements, if truly there were such.[43] This militates against respondent's claim that there was indeed such an agreement. Thus, the promissory notes should be accepted as they appear on their face.

Respondent's liability is not negated by the fact that he has uncollected commissions from the sale of the Molino properties. As the records of the case show, at the time of the execution of the promissory notes, the Molino properties were subject of various court actions commenced by different parties. Thus, the sale of the properties and, consequently, the payment of respondent's commissions were put on hold. The non-payment of his commissions could very well be the reason why he obtained a loan from petitioner.

In *Sierra v. Court of Appeals*,[44] we held that:

A promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith. If he reneges on his promise without cause, he forfeits the sympathy and assistance of this Court and deserves instead its sharp repudiation.

Aside from the payment of the principal obligation of P1,936,800.00, the parties agreed that respondent pay interest at the rate of 25% from February 17, 1997 until fully paid. Such rate, however, is excessive and thus, void. Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. To be sure, courts may reduce the interest rate as reason and equity demand.[45] In this case, 12% interest is reasonable.

The promissory notes likewise required the payment of a penalty charge of 3% per month or 36% per annum. We find such rates unconscionable. This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of ensuring the performance thereof by imposing on the debtor a special prestation (generally consisting of the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.[46] However, a penalty charge of 3% per month is

unconscionable;[47] hence, we reduce it to 1% per month or 12% per annum, pursuant to Article 1229 of the Civil Code which states:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.[48]

Lastly, respondent promised to pay 25% of his outstanding obligations as attorney's fees in case of non-payment thereof. Attorney's fees here are in the nature of liquidated damages. As long as said stipulation does not contravene law, morals, or public order, it is strictly binding upon respondent. Nonetheless, courts are empowered to reduce such rate if the same is iniquitous or unconscionable pursuant to the above-quoted provision.[49] This sentiment is echoed in Article 2227 of the Civil Code, to wit:

Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

Hence, we reduce the stipulated attorney's fees from 25% to 10%.[50]

Respondent's Counterclaim and Supplemental Counterclaim

The RTC, affirmed by the CA, granted respondent's counterclaims as it applied the doctrine of piercing the veil of corporate fiction. It is undisputed that the parties to the contract of sale of the subject properties are Pentacapital Realty as the buyer, CRDI as the seller, and respondent as the agent of CRDI. Respondent insisted, and the RTC and the CA agreed, that petitioner, as the parent company of Pentacapital Realty, was aware of the sale transaction, and that it was the former who paid the consideration of the sale. Hence, they concluded that the two corporations should be treated as one entity.

Petitioner assails the CA Decision sustaining the grant of respondent's counterclaim and supplemental counterclaim on the following grounds: first, respondent's claims are barred by res judicata, the same having been adjudicated with finality by the RTC-Cebu in Civil Case No. CEB-25032; second, piercing the veil of corporate fiction is without basis; third, the case is dismissible for failure to implead Pentacapital Realty as indispensable party; and last, respondent's supplemental counterclaim is actually a third party complaint against Pentacapital Realty, the filing thereof requires the payment of the necessary docket fees.

Petitioner's contentions are meritorious.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, 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.[51]

The requisites of res judicata are:

- (1) The former judgment or order must be final;
- (2) It must be a judgment on the merits;
- (3) It 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 second actions, identity of parties, subject matter, and cause of action.[52]

These requisites are present in the instant case. It is undisputed that respondent instituted an action for Preliminary Mandatory Injunction against Pentacapital Realty, before the RTC of Cebu City, docketed as Civil Case No. CEB-25032. On motion of Pentacapital Realty, in an Order dated August 15, 2001, the court dismissed the complaint on two grounds: 1) non-payment of the correct filing fee considering that the complaint was actually a collection of sum of money although denominated as Preliminary Mandatory Injunction; and 2) lack of cause of action. The court treated the complaint as a collection suit because respondent was seeking the payment of his unpaid commission or share in the proceeds of the sale of the Molino Properties. Additionally, the RTC found that respondent had no cause of action against Pentacapital Realty, there being no privity of contract between them. Lastly, the court held that it was CRDI which agreed that 20% of the total consideration of the sale be paid and delivered to respondent.[53] Instead of assailing the said Order, respondent filed his supplemental compulsory counterclaim, demanding again the payment of his commission, this time, against petitioner in the instant case. The Order, therefore, became final and executory.

Respondent's supplemental counterclaim against petitioner is anchored on the doctrine of piercing the veil of corporate fiction. Obviously, after the dismissal of his complaint before the RTC-Cebu, he now proceeds

against petitioner, through a counterclaim, on the basis of the same cause of action. Thus, if we follow respondent's contention that petitioner and Pentacapital Realty are one and the same entity, the latter being a subsidiary of the former, respondent is barred from instituting the present case based on the principle of bar by prior judgment. The RTC-Cebu already made a definitive conclusion that Pentacapital Realty is not a privy to the contract between respondent and CRDI. It also categorically stated that it was CRDI which agreed to pay respondent's commission equivalent to 20% of the proceeds of the sale. With these findings, and considering that petitioner's alleged liability stems from its supposed relation with Pentacapital Realty, logic dictates that the findings of the RTC-Cebu, which had become final and executory, should bind petitioner.

It is well-settled that when material facts or questions in issue in a former action were conclusively settled by a judgment rendered therein, such facts or questions constitute *res judicata* and may not again be litigated in a subsequent action between the same parties or their privies regardless of the form of the latter.[54] Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of the relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.[55] There is identity of parties not only when the parties in the cases are the same, but also between those in privity with them.

No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment, or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business; and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[56]

In view of the foregoing disquisitions, we find no necessity to discuss the other issues raised by petitioner.

Forum Shopping

For his part, respondent adopts the conclusions made by the RTC and the CA in granting his counterclaims. He adds that the petition should be dismissed on the ground of forum-shopping. He argues that petitioner is guilty of forum-shopping by filing the petition for review (G.R. No. 181482), assailing the CA Decision dated October 4, 2007, despite the pendency of G.R. No. 171736 assailing the CA Decision dated December 20, 2005.

We do not agree with respondent.

Forum-shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[57]

What is important in determining whether forum-shopping exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.[58]

Forum-shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[59]

More particularly, the elements of forum-shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[60]

These elements are not present in this case. In G.R. No. 171736, petitioner assails the propriety of the admission of respondent's supplemental compulsory counterclaim; while in G.R. No. 181482, petitioner assails the grant of respondent's supplemental compulsory counterclaim. In other words, the first case originated from an interlocutory order of the RTC, while the second case is an appeal from the decision of the court on the merits of the case. There is, therefore, no forum-shopping for the simple reason that the petition and the appeal involve two different and distinct issues.

WHEREFORE, premises considered, the petitions are hereby GRANTED. The Decisions and Resolutions of the Court of Appeals dated December 20, 2005 and March 1, 2006, in CA-G.R. SP No. 74851, and October 4, 2007 and January 21, 2008, in CA-G.R. CV No. 86939, are REVERSED and SET ASIDE.

Respondent Makilito B. Mahinay is ordered to pay petitioner Pentacapital Investment Corporation P1,936,800.00 plus 12% interest per annum, and 12% per annum penalty charge, starting February 17, 1997. He is likewise ordered to pay 10% of his outstanding obligation as attorney's fees. No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring; rollo (G.R. No. 171736), pp. 75-82.

[2] *Id.* at 84.

[3] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal, concurring; rollo (G.R. No. 181482), pp. 114-142.

[4] Id. at 99-100.

[5] Rollo (G.R. No. 181482), pp. 155-157.

[6] Id. at 171-174.

[7] Id. at 175-185.

[8] Id. at 176.

[9] Id. at 119.

[10] Id. at 183.

[11] Id. at 120.

[12] Id. at 176-177.

[13] Id. at 208-212.

[14] Id. at 213-216.

[15] Id. at 217-218.

[16] Id. at 158-161.

[17] Id. at 162-167.

[18] Id. at 168-170.

[19] Id. at 219-223.

[20] Id. at 226.

[21] Id. at 224-227.

[22] Id. at 238-239.

[23] Supra note 1.

[24] Rollo (G.R. No. 171736), pp. 79-82.

[25] Id. at 459-460.

[26] Penned by Judge Maria Rosario B. Ragasa, rollo (G.R. No. 181482), pp. 311-323.

[27] Id. at 322-323.

[28] Rollo (G.R. No. 181482), p. 133.

[29] Id. at 137-139.

[30] Id. at 140-141.

[31] Supra note 4.

[32] Rollo (G.R. No. 181482), pp. 40-43.

[33] Lambino v. Presiding Judge, RTC, Br. 172, Valenzuela City, G.R. No. 169551, January 24, 2007, 512 SCRA 525, 539-540.

- [34] Id. at 539.
- [35] De Rama v. Court of Appeals, 405 Phil. 531, 547 (2001).
- [36] Rollo (G.R. 181482), p. 176.
- [37] Saguid v. Security Finance, Inc., G.R. No. 159467, December 9, 2005, 477 SCRA 256, 268; Santos v. Heirs of Jose P. Mariano & Erlinda Mariano-Villanueva, 398 Phil. 174 (2000).
- [38] Saguid v. Security Finance, Inc., supra, at 270.
- [39] Surtida v. Rural Bank of Malinao (Albay), Inc., G.R. No. 170563, December 20, 2006, 511 SCRA 507, 519.
- [40] Id. at 519-520.
- [41] Id. at 520; Fernandez v. Fernandez, 416 Phil. 322 (2001).
- [42] Surtida v. Rural Bank of Malinao (Albay), Inc., supra, at 520.
- [43] Rollo (G.R. No. 181482), p. 59.
- [44] G.R. No. 90270, July 24, 1992, 211 SCRA 785, 795.
- [45] Ileana Dr. Macalinao v. Bank of the Philippine Islands, G.R. No. 175490, September 17, 2009.
- [46] Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd., G.R. No. 180458, July 30, 2009, 594 SCRA 461.
- [47] See Ileana Dr. Macalinao v. Bank of the Philippine Islands, supra note 45.
- [48] Emphasis supplied.
- [49] Co v. Admiral United Savings Bank, G.R. No. 154740, April 16, 2008, 551 SCRA 472.
- [50] Id.; Sim v. M.B. Finance Corporation, G.R. No. 164300, November 29, 2006, 508 SCRA 556.
- [51] Heirs of Panfilo F. Abalos v. Bucal, G.R. No. 156224, February 19, 2008, 546 SCRA 252, 271-272.
- [52] The Estate of Don Filemon Y. Sotto v. Palicte, G.R. No. 158642, September 22, 2008, 566 SCRA 142, 150; Mallion v. Alcantara, G.R. No. 141528, October 31, 2006, 506 SCRA 336, 343-344.
- [53] Rollo (G.R. No. 181482), pp. 168-170.
- [54] Navarro v. Metropolitan Bank & Trust Company, G.R. Nos. 165697 & 166481, August 4, 2009, 595 SCRA 149.
- [55] The Estate of Don Filemon Y. Sotto v. Palicte, supra note 52, at 152.
- [56] Navarro v. Metropolitan Bank & Trust Company, supra note 54.
- [57] Briones v. Henson-Cruz, G.R. No. 159130, August 22, 2008, 563 SCRA 69, 84.
- [58] Collantes v. Court of Appeals, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 568.
- [59] Id. at 569; Ao-As v. Court of Appeals, G.R. No. 128464, June 20, 2006, 491 SCRA 339.
- [60] Id.; Marcopper Mining Corporation v. Solidbank Corporation, 476 Phil. 415 (2004).

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