

MARGARITA M. BENEDICTO-MUÑOZ, PETITIONER, VS. MARIA ANGELES CACHO-OLIVARES, EDGARDO P. OLIVARES, PETER C. OLIVARES, CARMELA Q. OLIVARES, MICHAEL C. OLIVARES, ALEXANDRA B. OLIVAR...

G.R. No. 179121. November 09, 2015

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

These are consolidated petitions[1] docketed as G.R. Nos. 179121, 179128 and 179129.[2] Petitioners seek to nullify the June 29, 2007 Decision[3] ("Decision") and August 3, 2007 Resolution[4] of the Court of Appeals ("CA") in CA GR CV No. 80641. The CA reversed the October 22, 2003 Order[5] of the Regional Trial Court of Makati, Branch 142 ("trial court") in Civil Case No. 02-1049. The trial court dismissed the case filed by respondents because by reason of the dismissal of the complaint against one of the defendants, it had lost competency to act on the complaint for lack of sufficient legal basis, the benefits of dismissal having been extended to the other defendants.[6]

The Facts

The controversy arose from the Complaint for Damages and Revocation of Registration and License of Broker, Dealer and Salesman[7] ("Original Complaint") filed by respondents with the Securities and Exchange Commission ("SEC") on August 20, 1997. Respondents filed the Original Complaint against Abacus Securities Corporation ("Abacus"), Sapphire Securities, Inc. ("Sapphire"), Margarita Benedicto ("Benedicto"), Joel Chua Chiu ("Chiu") [collectively, the "petitioners"], Jose Maximo Cuaycong III ("Cuaycong"), Mark Angelo Cuaycong ("Mark Angelo") [collectively, the "Cuaycong brothers"], Dharmala Securities Philippines, Inc. ("Dharmala"), Lippo Securities, Inc. ("Lippo"), Jeannette Que ("Que"), and Christine Litton ("Litton"), docketed as SEC Case No. 08-97-5744.

Respondents claimed that Cuaycong, a salesman in securities, had engaged in fraudulent and deceitful activities with the complicity and knowledge of the defendant stock market brokerage firms (Abacus, Lippo, Sapphire and Dharmala), and the other individual defendants resulting in the loss of respondents' investments. They prayed that therein defendants be held jointly and severally liable for: actual damages in the amount of Php 7,040,645.22; moral damages of Php 33,000,000.00; exemplary damages of Php 50,000,000.00; and attorney's fees of Php 10,000,000.00.[8] Upon the effectivity of Republic Act No. 8799, or the Securities and Regulation Code, the case was raffled to the Regional Trial Court of Parañaque Branch 258 ("RTC of Paranaque"), and docketed as Civil Case No. 01-0059.[9]

Respondent Ma. Angeles Cacho-Olivares ("Niñez") also furnished the Philippine Stock Exchange, Inc. ("PSE") with copies of letter-complaints that she sent previously to Abacus, Lippo, Sapphire and Dharmala. The letter-complaints alleged that the brokerage firms committed massive stock market fraud on her and her

family.[10] The President of the PSE referred the letter-complaints to PSE's Compliance and Regulatory Group ("PSE-CRG") for preliminary investigation. The case was docketed as CRG-IS No. 97-01. In its Investigation Report[11] dated July 8, 1997, the PSE-CRG concluded that there was no evidence that would link any of the subject brokerage firms to any of the possible fraudulent acts and schemes of Cuaycong, and it appears that Cuaycong acted on his own and is solely responsible for the apparent fraud perpetrated against respondents.[12] The PSE-CRG stated though that the subject brokerage firms may have committed administrative and procedural lapses in violation of the Revised Securities Act and/or existing SEC Rules.[13]

Parenthetically the Cuaycong brothers, even before respondents could file the Original Complaint, had filed earlier on June 20, 1997, a case for Consignation and Damages[14] against respondents before the Regional Trial Court of Pasig Branch 69 ("RTC of Pasig"), docketed as Civil Case No. 66321. Cuaycong admitted that he was in possession of the funds owned by respondents in the total amount of Php 7,040,645.22[15] and offered to deposit the same with the court. In his defense, he alleged that he acted as fund manager for the respondents, who knew that he [Cuaycong] commingled their [respondents] funds with those of his other clients, including his brother Mark Angelo. Mark Angelo alleged that he had no direct dealings with the respondents.[16]

In a Joint Manifestation with Motion[17] dated July 12, 2001, the Cuaycong brothers and the respondents manifested to the RTC of Pasig that they had amicably settled their differences and entered into a Compromise Agreement. Respondents agreed to drop the Cuaycong brothers as defendants in Civil Case No. 01-0059 in consideration of the payment of Php 7,040,645.22. The RTC of Pasig approved the Compromise Agreement in its July 17, 2001 Decision.[18]

Respondents filed an ex parte motion to drop the Cuaycong brothers before the RTC of Paranaque. In another turn of events, Civil Case No. 01-0059 was re-raffled and finally transferred to the trial court, and now docketed as Civil Case No. 02-1049.[19]

The trial court conducted a clarificatory hearing where respondents manifested their intention to pursue the case against the remaining defendants. The trial court ordered the parties to submit their memoranda.[20]

On July 1, 2003, the trial court granted respondents' ex parte motion and dropped the Cuaycong brothers from the Original Complaint.[21] In a later order, it directed respondents to file an amended complaint that would clarify the "different and separable acts" committed by the remaining defendants which respondents asserted were "independent of the liability of the Cuaycongs." Since the trial court said that it had no jurisdiction over causes of action for revocation of registration and license of broker, dealer and salesman, it also ordered respondents to sever these causes of action.[22]

On September 17, 2003, respondents filed an Amended and Supplemental Complaint[23] against the remaining defendants. They deleted the prayer for actual damages and asked the trial court to adjudge the remaining defendants, solidarity liable for moral and exemplary damages and attorney's fees.[24]

Holding that the Cuaycong brothers were indispensable parties sued with the other defendants, under a common cause of action, the trial court dismissed the Amended and Supplemental Complaint in its October 22, 2003 Order, the dispositive portion of which reads:

Prescinding from the foregoing and conformably with the rulings in the cases of Lim Tanhu and Co as aforecited, the Court finds that by reason of the dismissal of the complaint against the Cuaycongs, it had lost competency to act on the instant complaint for lack of sufficient legal basis, the benefits of dismissal having been extended to the other defendants.

Accordingly, the Amended and Supplemental Complaint is dismissed.

SO ORDERED.[25] (Emphasis supplied.)

Respondents appealed to the CA. The CA, in its Decision, granted the appeal and remanded the case to the trial court for further proceedings.[26] The CA held that the Compromise Agreement did not absolve the other defendants because: a) respondents' cause of action against the remaining defendants is separate and distinct from that against the Cuaycong brothers; b) the other defendants are not party-litigants in the case before the RTC of Pasig; c) the Compromise Agreement does not provide expressly or impliedly that the alleged liabilities of the remaining defendants shall likewise be extinguished; and d) only the Cuaycong brothers and the respondents are the real parties in interest in the civil case pending with the RTC of Pasig.[27]

Defendants filed a Motion for Reconsideration which the CA denied in its August 3, 2007 Resolution.[28]

Some of the defendants, now petitioners, come to us seeking to reverse and nullify the CA's Decision.

Petitioners' Arguments

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Petitioner Benedicto alleges that she was dragged into the controversy on the allegation that she was the girlfriend of Cuaycong, and that she participated in the deposit of a Prudential Bank check in the amount of Php 500,000.00 issued by respondent Peter Olivares, into her ledger account in Dharmala. She denies involvement in the activities of Cuaycong and argues that Cuaycong used her trading account in Dharmala without her knowledge and acquiescence.[29] In fact the PSE-CRG, in its Investigation Report, found that she has nothing to do with the respondents' losses.

She insists that the Compromise Agreement extinguished her liability, if any. Respondents sued her under a common cause of action with the Cuaycong brothers. The latter are indispensable parties and without them no final determination can be had on her alleged liability. Further, all the defendants in the Complaint were sued as joint tortfeasors, thus payment by the Cuaycong brothers under the Compromise Agreement operates as a defense in her favor.

G.R. No. 179128

Petitioners Abacus and Chiu similarly argue that the charges against them and the Cuaycong brothers are closely intertwined. Respondents accuse Abacus and Chiu of being aware of, and consenting, to Cuaycong's buying and selling of securities for his own account using the funds of respondents. The charges leveled against them arose from Cuaycong's acts; therefore their liability cannot be taken separately from the acts of Cuaycong.

In addition, the Compromise Agreement has the effect of *res judicata*.[30] It effectively condoned and released the Cuaycong brothers from liability. Continuation of the case against Abacus and Chiu would be tantamount to relitigation of the Cuaycong brothers' liabilities, since the charges against the former are predicated on the fraudulent acts of the latter.[31]

Abacus and Chiu also assert that the prayer for moral and exemplary damages has lost its legal basis because actual damages had already been paid. Thus, respondents have no cause of action under the Amended and Supplemental Complaint.

G.R. No. 179129

Sapphire also argues that it was sued under a common cause of action with the Cuaycong brothers. The Amended and Supplemental Complaint alleges that all the defendants indispensably cooperated and participated in the act of one another.[32] The integrity of the common cause of action does not permit the waiver of respondents' right only as to one or some of them.[33]

Respondents' Arguments

Respondents in their Consolidated Comment[34] dated February 11, 2008, state that the Amended and Supplemental Complaint contains charges that do not involve the Cuaycong brothers. For instance, petitioner Abacus had allowed petitioner Chiu to effect the sale/purchase of shares owned by, and without authorization from the respondents, and that petitioners misrepresented certain employees to the respondents as its salesmen when they were not licensed or registered to do so in order to gain and thus, resulted in respondents being damaged.[35] Thus, there is no common cause of action against the petitioners and the Cuaycong brothers. The Cuaycong brothers are not indispensable parties.

Respondents also submit that the principle of res judicata is inapplicable because there is no identity of parties and causes of action between Civil Case No. 02-1049 and Civil Case No. 66321. The former involves petitioners and respondents, while the latter involves only the respondents and the Cuaycong brothers. The first is an action for damages, whereas the second is an action for consignation.

Respondents maintain that the existence of actual damages is not a condition for the grant of moral and exemplary damages.

They also argue that public interest and the protection of market investors from fraud and misrepresentation requires the case to proceed.

Finally, respondents pray that the petition filed by Sapphire be dismissed for being "effectively unverified," for lack of a document to prove the authority of Mr. Jeremias Cruzabra (represented as a trustee of Sapphire) to sign the petition.[36]

Issues

The petitions raise the following issues:

- WHETHER THE DISMISSAL OF THE CASE AS AGAINST THE CUAYCONG BROTHERS BENEFITS THE OTHER DEFENDANTS IN CIVIL CASE NO. 02-1049.
- WHETHER THE APPROVED COMPROMISE AGREEMENT OPERATES AS RES JUDICATA TO CIVIL CASE NO. 02-1049.

Our Ruling

We grant the petitions.

The dismissal of the case as against the Cuaycong brothers benefits the other defendants in Civil Case No. 02-1049.

Petitioners submit that the dismissal of the case as against the Cuaycong brothers inures to their benefit because: (a) they were sued under a single and/or common cause of action with the Cuaycong brothers; and (b) the Cuaycong brothers are indispensable parties, without who no final determination can be had on the case.

We agree with petitioners.

The Original Complaint and the Amended and Supplemental Complaint allege the same essential cause of action against the Cuaycong brothers and the petitioners—that is, stock market fraud committed by Cuaycong principally through misappropriation, with the complicity and indispensable cooperation of the defendant stock market brokerage firms and the individual defendants. The Amended and Supplemental Complaint failed to allege

"different and separable acts" committed by the remaining defendants independent of the acts and omissions of Cuaycong. Under both the Original Complaint and the Amended and Supplemental Complaint, Cuaycong was the central actor in the series of wrongdoings that led to the loss of investments of the respondents, while the defendants' alleged action or inaction made such wrongdoings possible.

The Amended and Supplemental Complaint identified the Cuaycongs as "erstwhile defendants." [37] It also dropped the Cuaycongs as defendants as well as the cause of action for actual damages. It added an enumeration of the provisions of the Securities Regulation Code upon which respondents anchored their cause of action. But beyond these, it retained essentially the same factual allegations and narration of the Original Complaint as to the acts and omissions of Cuaycong, and the participation of the other defendants in the same fraud perpetrated by Cuaycong. The following summarizes the acts of Cuaycong and the participation of Mark Angelo, the brokerage firms and the individual defendants:

Cuaycong, as a salesman of Abacus, received from Niñez [38] and her son Peter Olivares [39] shares of stocks, for deposit to their respective trading account in Abacus. He also received from Niñez and her husband Edgardo Olivares, [40] crossed checks for the purchase of shares of stock. Cuaycong represented to Niñez, Edgardo and Peter (the "Olivareses") that their stock and money investments were deposited to their Abacus trading accounts; when in truth, no such accounts exist. [41] Instead, Cuaycong commingled [42] and diverted the shares and money he received to his personal account in Lippo and Sapphire. In turn, Lippo through its agent Litton, [43] and Sapphire through its agent Que [44] -without the authorization of the Olivareses - used the money and the shares of the Olivareses to partially liquidate the margin liabilities of Cuaycong. Cuaycong also transferred some of the money and shares of Niñez to the Abacus account of his brother, Mark Angelo, who was heavily indebted with Abacus. [45] The transfer was done with the indispensable cooperation of Abacus, through its agent Chiu, who made unauthorized purchases and sales of shares of stock using the account of Niñez to conceal Cuaycong's misappropriation. [46]

At some point, Cuaycong ceased to be a salesman of Abacus, [47] and became a salesman of Dharmala. In Dharmala, Cuaycong continued to receive shares and money from the Olivareses, which he continued to misappropriate. Specifically, Cuaycong represented to Niñez and Peter that he opened stock trading accounts for them, when in fact he did not. [48] Niñez [49] and Peter [50] issued crossed checks in Dharmala's favor for the purchase of the initial public offering shares of certain corporations. Niñez [51] also delivered to Cuaycong shares for deposit to her Dharmala trading account. However, unknown to Niñez and Peter, Cuaycong, with the indispensable cooperation of Dharmala, commingled and diverted their money and shares of stock to his personal account in Dharmala to partially liquidate his cash and/or margin liabilities. [52] Cuaycong also transferred some of the money of Niñez to the account of Mark Angelo in Lippo. Lippo, without the authorization of Niñez, accepted for deposit to Mark Angelo's account, the crossed checks issued by Niñez. [53] Further, Cuaycong, through the indispensable participation of Benedicto, transferred Peter's money to the account of Benedicto in Dharmala. [54]

Thus, as with the Original Complaint, the allegations of the Amended and Supplemental Complaint, though they dropped the Cuaycong brothers as defendants, and refer to them now as "erstwhile defendants," nevertheless still plead that the acts and omissions of petitioners and the Cuaycong brothers are inextricably connected and interrelated. The allegations attribute connivance and cooperation between Cuaycong and the remaining defendants. We quote portions of the Amended and Supplemental Complaint, to wit:

1.23 Unknown to the Plaintiffs, at that point in time, are the material facts that Abacus had feloniously permitted Cuaycong, as its salesman and agent, to purchase and sell securities for his own account, cash and/or on margin; that Cuaycong's "trading with Abacus was under suspension due to existing accountabilities"; that

he was not licensed and registered as a dealer; and that he was, therefore, in a conflict of interest situation vis-a-vis the customers of Abacus particularly those being serviced by Cuaycong. By thus permitting Cuaycong to trade for his own account and without being duly licensed and registered as a dealer, Abacus thereby indispensably facilitated the ability of Cuaycong to divert to his personal account, as in fact he did, the funds and securities of the Plaintiffs, principally Edgardo Olivares, Nificz Cacho-Olivares, Peter Olivares and other customers of Abacus.

xxx

g. By its act of concealment, Abacus thereby became an indispensable participant in each and all of the acts and omissions of Cuaycong and the other defendants as herein detailed.

xxx

1.26 With the indispensable participation and cooperation of Abacus; of Lippo consisting of its own acts and omissions as herein detailed; of defendant Christine Litton acting as an ostensible "agent" of Cuaycong and/or as an unlicensed and unregistered salesman of Lippo, Abacus salesman and agent Cuaycong deposited, without any authorization whatsoever from any of the Plaintiffs, all the shares described in the preceding paragraph to his Lippo account to liquidate partially his cash and/or margin liabilities to Lippo.

xxx

c. Acting purely for its own self interest of maximizing its profits and with the ulterior motive of pirating the customers, Lippo agreed to be the stock broker of Cuaycong and/or allowed Cuaycong to act as its salesman. They thereby indispensably and cooperatively participated in the consummation of the malevolent misappropriation by Abacus salesman and agent Cuaycong of Plaintiffs' shares of stock described in the preceding paragraph.

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xxx

c. Abacus salesman and agent Cuaycong, without any authorization whatsoever from Niñez Cacho-Olivares, with the passive and/or direct participation and cooperation of his brother Mark Angelo Cuaycong, and with the indispensable participation and cooperation of Abacus, instructed Abacus to deposit her check of Php400,000 to the account of his brother instead of Plaintiffs' account, whether Abacus Acct 1 or the non-existent Abacus Acct 2 to the prejudice of the latter. Abacus failed or refused to comply with its legal duty to verify or confirm with Niñez Cacho-Olivares the veracity of such an instruction. At that time, Mark Angelo Cuaycong was heavily indebted to Abacus.

xxx

1.38 As a consequence of the concealment by Abacus of the material facts on Cuaycong, Cuaycong successfully induced Niñez Cacho-Olivares to sign, on 14 March 1996, a letter to Abacus, the wording of which was dictated by Cuaycong on the phone, giving these instructions, to which letter Niñez Cacho-Olivares added, in her own handwriting, the instruction: ktPlease close the Acct. of MA Angeles Olivares#1"...

1.39 Despite the repeated written instructions of Niñez Cacho-Olivares that her Abacus Acct 1 be closed, Abacus and its unlicensed and unregistered salesman or "agent" Chiu illegally purchased and sold, as alleged in the preceding paragraph, 300,000 shares of First Abacus Fund with Chiu acting as the "agent" as stated in the confirmation slips.

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1.41 Subsequent investigation disclosed that those representations and pretenses were all surreptitiously made by, Abacus, Sapphire and Cuaycong, with the indispensable participation and cooperation of defendant Jcannette Que acting as the ostensible "agent" of Cuaycong and/or as an unlicensed and unregistered salesman of Sapphire, to obtain from Edgardo Olivarez the sum of P1,000,000.00, and thereafter utilize that sum to partially pay for Cuaycong's personal liabilities, cash and/or margin to Sapphire.

xxx

c. Instead of utilizing the proceeds of the P1,000,000.00 check to pay for the IPO investment of Edgardo Olivares, Sapphire, Cuaycong and defendant Jcannette Que, indispensably cooperating and participating in the act of one another, utilized the same to partially pay the cash and/or margin liabilities that Cuaycong owed Sapphire to the damage and prejudice of the Plaintiffs, Edgardo Olivares in particular.

1.42

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d. Unknown to spouses Peter and Carmela Olivares, Abacus salesman and agent Cuaycong deposited without authorization all the securities described in subparagraph (b) hereof to his Lippo account to partially discharge his cash and/or margin liabilities to Lippo with the indispensable participation and/or cooperation of Abacus, Lippo and defendant Christine Litton acting as an ostensible "agent" of Cuaycong and/or as an unlicensed and unregistered salesman of Lippo.

xxx

1.47 On its part, Dharmala committed, directly or indirectly, among others, these acts, transactions, practice or course of business in the purchase and sale of securities which operate's frauds or deceits upon any person for that matter:

xxx

f. Permitting (and failing to disclose to the Plaintiffs) Cuaycong to buy and sell securities for his personal account, cash and/or on margin, without being duly licensed as a dealer and who was thereby placed in a conflict of interest situation vis-a-vis the customers of Dharmala particularly those being serviced by him. By thus permitting Cuaycong to buy and sell securities for his personal account, Dharmala thereby indispensably facilitated the ability of Cuaycong to divert to his personal account, as in fact he did, the funds and securities of Edgardo Olivares, Niñez Cacho-Olivares, Peter Olivares and other customers of Dharmala. He was also unlicensed and unregistered as a dealer.

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1.50 On the dates specified below, Peter Olivares drew and delivered to Cuaycong three (3) crossed checks in favor of Dharmala as payment for some shares which Cuaycong claimed were purchased on his behalf. Dharmala and Cuaycong misappropriated, with intent of gain, the proceeds of those checks to the prejudice of Peter Olivares in this manner:

b. Prudential Check No. 0070058 dated 6 July 1996 drawn in favor of Dharmala for the sum of P500,000 which Dharmala and Cuaycong, with the active and/or passive indispensable participation of defendant Margarita Benedicto, alleged "girl friend" of Cuaycong, deposited that check to the account of defendant Margarita Benedicto.[55] (Emphasis supplied.)

The foregoing allegations plead the substantive unity in the alleged fraud and deceit that the Cuaycong brothers and the petitioners committed against respondents, which resulted in a single injury-the loss of investments in the amount of Php 7,040,645.22 (which is also the actual damages claimed in the Original Complaint, and the amount

subject of the Compromise Agreement in Civil Case No. 66321). Each of the petitioners performed an indispensable act that aided and abetted the illegal activities of the Cuaycong brothers, without which the latter would not be able to successfully consummate their fraudulent scheme. In their Appellants' Brief, respondents acknowledged that conspiracy existed between the Cuaycong brothers and the petitioners.[56]

Conversely, the indispensable parties in this case are not only the Cuaycong brothers but also the petitioners. An indispensable party is one whose interest in the subject matter of the suit and the relief sought are so inextricably intertwined with the other parties that his legal presence as a party to the proceeding is an absolute necessity.[57] On the contrary, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court.[58]

Since the Cuaycong brothers and the petitioners, as indispensable parties, had played various interconnected roles that led to the singular injury and loss of the respondents, their liabilities cannot be separately determined. The trial court is correct in applying our ruling in *Co v. Acosta*,[59] citing *Lim Tanhu v. Ramolete*,[60] viz:

The private respondents' complaint for a sum of money with attachment against PEPSI and Rufino Co clearly shows that PEPSI and the petitioner are indispensable parties to the case. In fact the private respondents sued both PEPSI and the herein petitioner under a common cause of action. Paragraph 21 of the complaint states that:

21. That both defendants are guilty of conspiracy; connivance, unfair play, and foul tactics because on the one hand, PEPSI received and accepted the 1,000 refrigerators from plaintiffs without the intention to pay the latter but only with the intent to set off the debts of Rufino Co. On the other hand, Rufino Co refused to pay plaintiffs the price of the 1,000 refrigerators despite due demand, and he was happy that his debts or obligations to PEPSI were set off or were discounted by means not coming from his pockets. In other words, both defendants acting in concert and with a view to victimize the hapless and unsuspecting plaintiffs made simultaneous acts calculated to gain and to profit from the loss and misfortune of plaintiffs.

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[Our ruling in the *Lim Tanhu* case was based on the fact that all the defendants therein were indispensable parties and the plaintiff moved for the dropping of two defendants from the complaint. The situation is similar to this case where both PEPSI and Rufino Co were sued as indispensable parties under a common cause of action, and on motion of the private respondent PEPSI was dropped as a party defendant.] We held in the *Lim Tanhu* case that:

xxx The substantive unity of the plaintiffs cause against all the defendant is carried through to its objective phase as ineluctably demanded by the homogeneity and indivisibility of justice itself. Indeed, since the singleness of the cause of action also inevitably implies that the defendants are indispensable parties, the court's power to act is integral and cannot be split such that it cannot relieve any of them and at the same time render judgment against the rest.

xxx It does not matter that the dismissal is upon the evidence presented by the plaintiff himself or upon the latter's mere desistance, for in both contingencies, the lack of sufficient legal basis must be the cause. The integrity of the common cause of action against all the defendants and the indispensability of all of them in the proceedings do not permit any possibility of waiver of the plaintiffs right only as to one or some of them, without including all of them, and so, as a rule, withdrawal must be deemed to be a confession of weakness as to all.[61] (Emphasis supplied.)

The following must concur for the *Tanhu* and *Co* ruling to apply: (a) the defendants must be sued under a common cause of action; and (b) all must be indispensable parties.[62] Both requisites are present in this case. The dismissal of the action against the Cuaycong brothers also warrants the dismissal of the suit against the other

defendants.

The inseparability of the liabilities of the Cuaycong brothers and the petitioners finds further support in law. Section 58[63] of the Securities Regulation Code ("SRC") punishes persons primarily liable for fraudulent transactions. Section 26 of the SRC enumerates the fraudulent transactions penalized under Section 58, to wit:

Section 26. Fraudulent Transactions. - It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a Fraud or deceit upon any person.[64]

In particular, the "fraud" referred to in Section 26.3 pertains to fraud which is akin to bad faith implying a conscious design to do a wrongful act for a dishonest purpose or moral obliquity.[65] Section 51.4 of the SRC makes it "unlawful for any person to aid, abet, counsel, command, induce or procure any violation of the Code." The SRC then punishes the persons primarily liable for fraudulent transactions under Section 58 and their aiders or abettors under Section 51.5,[66] by making their liability for damages joint and solidary.

Here, the allegations of both the Original Complaint and the Amended and Supplemental Complaint show that Cuaycong is the main actor in the misappropriation of the money and shares of stock of the respondents. He is the person primarily liable under Section 58, while petitioners who substantially assisted and indispensably cooperated in the conduct of his wrongful acts are the aiders or abettors under Sections 51.4 and 51.5. Cuaycong and the petitioners engaged in a "transaction, practice or course of business which operates or would operate as a fraud or deceit" upon the respondents." [67] Thus, Cuaycong and the petitioners should be held solidarity liable for the resulting damage to the respondents. Respondents cannot condone Cuaycong's liability and proceed only against his aiders or abettors because the liability of the latter are tied up with the former. Liability attaches to the aider or abettor precisely because of the existence of the liability of the person primarily liable.

The approved Compromise
Agreement between the respondents
and the Cuaycong brothers operates
as res judicata to Civil Case
No. 02-1049.

The CA, in its Decision, held that the Compromise Agreement between the Cuaycong brothers and the respondents does not have the effect of res judicata:

Thus, We believe and so hold that the compromise agreement, supra, does not have the effect of absolving the Appellees [Petitioners in this Petition for Review] from their alleged liabilities in the case at bar. Clearly, the acts complained of by the Appellants [Respondents] in the instant case are separate and distinct from the acts allegedly committed by the CUAYCONGS. Furthermore, the parties in Civil Case No. 66321, which was the subject of the compromise agreement, supra, are the CUAYCONGS and the Appellants only. The Appellees herein were not impleaded as party-litigants in the said case. Moreover, it is worthy to note that the compromise agreement, supra, did not expressly, nor impliedly, indicate that with its execution the Appellees are likewise absolved from their liabilities. Instead, it stated that "for the sole purpose of buying peace for themselves, the parties have agreed xxx to settle their differences and respective claims xxx".

xxx Additionally, the Appellants, in the instant case, filed for (a) damages and (b) revocation of registration and license of broker, dealer and salesman against the Appellees, whereas, the complaint in Civil Case No. 66321 filed by the CUAYCONGs against the Appellants before the Pasig RTC was for consignment and damages. Obviously, the reliefs being sought by the Appellants are different from the reliefs sought by the CUAYCONGs.[68] (Emphasis supplied.)

Article 2037 of the New Civil Code of the Philippines ("Civil Code") states that "a compromise has upon the parties the effect and authority of res judicata; but there shall be no execution except in compliance with a judicial compromise." To have the effect of res judicata, a compromise between parties must meet two (2) tests. First, the new litigation must involve the same subject matter covered by the compromise (identity of object) and second, the issue should be between the same parties (identity of persons).[69] These two elements are present in this case.

The two litigations involved are Civil Case No. 66321 or the case for consignment and damages, and Civil Case No. 02-1049[70] or the case for damages. Though the compromise was effected in the former suit, its subject matter is exactly the satisfaction of the same damages prayed for in the latter action. The Compromise Agreement reads in part:

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WHEREAS, for the sole purpose of buying the peace for themselves, the parties have agreed, as they hereby agree, between themselves, to settle their differences and respective claims in both the above-entitled case and Civil Case No. 01-0059 [the docket number of the present case while pending before the RTC of Parañaque] under the terms and conditions set forth herein:

1. The defendants have agreed, as they hereby agree, to accept and/or withdraw, as they do hereby accept, the amount of SEVEN MILLION FORTY THOUSAND SIX HUNDRED FORTY FIVE PESOS and 22/100 (Php7,040,645.22), including interests thereon, which the plaintiffs have consigned on June 20, 1997 in the above-entitled case, under RTC, Pasig City, Official Receipt No. 7952033, in full payment and settlement of the defendants' claim against the plaintiffs in the above-entitled case and in Civil Case No. 01-0059.[71] (Emphasis and underscoring supplied.)

Civil Case Nos. 66321 and 02-1049 have the same subject matter or object, which is the payment of the claims sought by respondents.

There is also identity of parties in both cases. Absolute identity of parties is not required, substantial identity of parties suffices. In *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*, [72] we ruled that "there is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second; and such identity of interest is sufficient to make them privy-in-law." [73] The principle of res judicata may not be evaded by the expedient of adding or eliminating some parties to the first and second action. [74] Accordingly, although not impleaded in Civil Case No. 66321, petitioners are "privy-in-law" to the compromise, because they are sued under a common cause of action with the Cuaycong brothers in Civil Case No. 02-1049.

Since res judicata applies, respondents cannot be permitted to further pursue a complaint for moral and exemplary damages and attorney's fees against petitioners. A judgment based on a compromise agreement is a judgment on the merits. [75] Hence, the compromise in Civil Case No. 66321 bars the continuation of Civil Case No. 02-1049.

We also uphold the contention of petitioners that the payment of Php 7,040,645.22 under the Compromise Agreement has extinguished the entire claim of respondents in Civil Case No. 02-1049, that is, not only the actual but also the moral and exemplary damages. The tenor of the Compromise Agreement leaves no doubt for interpretation - it says that the agreement shall serve as "full payment and settlement of the defendants' claim

against the plaintiffs in the above entitled case [case for consignment and damages] and Civil Case No. 01-0059 [the case before us]." Respondents' claim in Civil Case No. 02-1049 is not limited to actual damages but also includes moral and exemplary damages and attorney's fees.

Meanwhile, petitioners and the Cuaycong brothers were sued as solidary debtors in the Original Complaint; and under the Civil Code, payment made by one of the solidary debtors extinguishes the obligation.^[76] Hence, the payment of the Cuaycong brothers under the Compromise Agreement effectively satisfied the claim as to all of them (solidary debtors). This is yet another reason for the Amended and Supplemental Complaint to be dismissed.

As regards the defective verification in the petition filed by Sapphire, this by itself does not merit the dismissal of the case. We held that "as to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective."^[77] In this case, the ends of justice will be better served if we relax the rule and act on Sapphire's petition; lest we allow the action to proceed only as against Sapphire, when we already rule that there is no more cause of action against Sapphire, the Compromise Agreement having extinguished the liability of not only the Cuaycong brothers but also the petitioners.

Finally, we agree with the respondents that the protection of the investing public against fraudulent practices and machinations is a well-entrenched policy in our jurisdiction. The law provides three remedies to victims of securities fraud namely: civil,^[78] criminal^[79] and administrative^[80] actions. Respondents chose to pursue a civil complaint against the petitioners. Under the SRC, respondents may recover damages not exceeding triple the amount of the transaction plus actual damages. Exemplary damages and attorney's fees may also be awarded, thus:

Section 63. Amount of Damages to be Awarded.

63.1. All suits to recover damages pursuant to Sections 56, 57, 58, 59, 60 and 61 shall be brought before the Regional Trial Court, which shall have exclusive jurisdiction to hear and decide such suits. The Court is hereby authorized to award damages in an amount not exceeding triple the amount of the transaction plus actual damages.

Exemplary damages may also be awarded in cases of bad faith, fraud, malevolence or wantonness in the violation of this Code or the rules and regulations promulgated thereunder.

The Court is also authorized to award attorney's fees not exceeding thirty per centum (30%) of the award. (Emphasis supplied.)

As a treatise on securities regulation explains Section 63:

The court is authorized to award damages up to thrice the transaction amount plus actual damages, as well as exemplary damages in cases of bad faith, fraud, malevolence, or wantonness in the violation of the SRC and the SRC Rules. The court may also authorize the recovery of attorney's fees not exceeding 30% of the award, to "encourage attorneys, as in the U.S. practice, to get significant awards" so that they will be "more conscious" of their engagement to assist their investor-clients enforce the provisions of the SRC (see the deliberations of the Senate on Senate Bill No. 1220 on November 16, 1998).

Hopefully, the desired in terrorem impact of SRC Section 63, as a treble-damage provision, would prove to be effective in deterring securities fraud and other related irregularity.^[82]

By opting to enter into a compromise agreement with Cuaycong, petitioners gave up their opportunity, in the public interest, to robustly litigate the case to its full extent and for its desired in terrorem impact, as against Cuaycong and his aiders or abettors.

We do not see how forgiving the principal actor, but not his aiders and abettors, advances the public policy

objectives of Section 63 to deter securities fraud.

We note that respondents had already recovered their lost investments when they had been paid Php 7,040,645.22 on the basis of the Compromise Agreement approved in Civil Case No. 66321. They further admitted in their Appellant's Brief that the SEC had already imposed administrative fines to the petitioners.[83]

WHEREFORE, the consolidated petitions are GRANTED. The assailed Decision and Resolution of the Court of Appeals dated June 29, 2007 and August 3, 2007, respectively, are hereby SET ASIDE.

The Order of the trial court dated October 22, 2003 dismissing Civil Case No. 02-1049 is REINSTATED. No costs.

SO ORDERED.

Brion,[*] Peralta,**] (Acting Chairperson), Villarama, Jr., and Reyes, JJ., concur.

December 8, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___November 9, 2015___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 8, 2015 at 10:25 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated as Additional Member per Raffle dated November 4, 2015.

**] Associate Justice Presbitero J. Velasco, Jr. recused himself from these cases due to relation to a party.

[1] This Court consolidated the petitions in our Resolution dated October 10, 2007; sec rollo, G.R. No. 179121, pp. 581-582.

[2] Petition for Review on Certiorari filed by Margarita Benedicto, rollo, G.R. No. 179121, pp. 11-46; Petition for Review on Certiorari filed by Abacus Securities Corporation and Joel Chua Chiu, rollo, G.R. No. 179128, pp. 9-37; and Petition for Review on Certiorari tiled by Sapphire Securities, Inc., rollo, G.R. No. 179129, pp. 12-28.

[3] Rollo, G.R. No. 179121, pp. 50-70; penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. (Ninth Division).

[4] Id. at 71-72; penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. (Ninth Division).

[5] Id. at 337-342; penned by Judge (now Justice of this Court) Estela Perlas-Bemabe.

[6] Id at 342.

- [7] Id. at 145-230.
- [8] Id. at 225-227.
- [9] Id at 20.
- [10] Id at 90.
- [11] Id. at 89-144.
- [12] Id. at 113.
- [13] Id. at 142.
- [14] Id. at 231-242.
- [15] Id. at 233.
- [16] Id. at 237.
- [17] Id. at 243-245.
- [18] Id. at 246-247.
- [19] Id. at 21.
- [20] Id. at 252.
- [21] Id at 53.
- [22] Id. at 273.
- [23] Id. at 274-334.
- [24] Id. at 328-329.
- [25] Id. at 342.
- [26] Id. at 68.
- [27] Id. at 66-68.
- [28] Id. at 25.
- [29] Id. at 29.
- [30] Rollo, G.R. No. 179128, p. 25.
- [31] Id. at 26.
- [32] Rollo, G.R. No. 179129, p. 21.
- [33] Id. at 18.
- [34] Rollo, G.R. No. 179121, pp. 619-672.
- [35] Id. at 647-648.
- [36] Id. at 666.
- [37] Amended and Supplemental Complaint, pars. 1.10 and 1.11, rollo, G.R. No. 179121, p. 278.

[28] Amended and Supplemental Complaint, pars. 1.20 (c), 1.25 and 1.31, id. at 288, 292 and 296; Original Complaint, pars. 1.20 (c), 1.26 and 1.32, id. at 164-165, 170-172 and 178.

[39] Amended and Supplemental Complaint, par. 1.42 (b), id. at 307-308; Original Complaint, par. 1.43(b), id. at 200-202.

[40] Amended and Supplemental Complaint, par. 1.40, id. at 303-304; Original Complaint, par. 1.41, id. at 194-196.

[41] Amended and Supplemental Complaint, pars. 1.21, 1.32 and 1.40, id. at 289, 296 and 303-304; Original Complaint, pars. 1.21, 1.33 and 1.41, id. at 165, 178-179 and 194-196.

[42] Amended and Supplemental Complaint, par. 1.22 (c), id. at 289; Original Complaint, par. 1.22 (c), id. at 166.

[43] Amended and Supplemental Complaint, pars. 1.26 and 1.42 (d), id. at 293-294 and 309; Original Complaint, pars. 1.27 and 1.43 (d), id. at 172-174 and 202.

[44] Amended and Supplemental Complaint, par. 1.41, id. at 304-306; Original Complaint, par. 1.42, id. at 196-200.

[45] Amended and Supplemental Complaint, pars. 1.35 and 1.38, id. at 298-299 and 301-303; Original Complaint, pars. 1.36 (c) and 1.39 (c) [3], id. at 183-184 and 191-192.

[46] Amended and Supplemental Complaint, pars. 1.33-1.34 and 1.39, id. at 296-298 and 303; Original Complaint, pars. 1.34-1.35 and 1.40, id. at 179-182 and 194.

[47] Amended and Supplemental Complaint, par. 1.30, id. at 295-296; Original Complaint, par. 1.31, id. at 176-178.

[48] Amended and Supplemental Complaint, par. 1.45 (d), id. at 312; Original Complaint, par. 1.46 (d), id. at 207.

[49] Amended and Supplemental Complaint, pars. 1.48 (a) and 1.54 (a), id. at 314 and 317; Original Complaint, pars. 1.49 (a) and 1.55 (a), id. at 211 and 217-218.

[50] Amended and Supplemental Complaint, par. 1.50. id. at 314; Original Complaint, par. 151, id. at 212-214.

[51] Amended and Supplemental Complaint, par. 1.55. id. at 318; Original Complaint, par. 156 id at 218-219.

[52] Amended and Supplemental Complaint, pars. 1.47 (g), and 1.55, id. at 313 and 318; Original Complaint, pars. 1.48 (i), 1.49 (b) and 1.56, id. at 210, 211 and 218-219.

[53] Amended and Supplemental Complaint, par. 1.54 (b), id. at 318; Original Complaint, par. 1.55 (b), id. at 218.

[54] Amended and Supplemental Complaint, par. 1.50 (b), id. at 314; Original Complaint, par.151 (b) id. at 213.

[55] Rollo, G.R. No. 179121, pp. 290-314.

[56] "As noted earlier, the assistance, collusion and express complicity of Abacus, et al. facilitated the acts and omissions of erstwhile Defendant Cuaycong. Without the organizational manpower, business reputation, office facilities, business contacts, marketing strategies and the like of these stock brokerage firms, which erstwhile Defendant Cuaycong exploited to the hilt, the latter would not have easily defrauded the Plaintiffs-Appellants [Respondents in this Petition for Review]. Thus, a form of conspiracy existed between erstwhile Defendant Cuaycong and the Defendants-Appellees."

(Emphasis supplied.); CA rollo, p. 123.

[57] *Imson v. Court of Appeals*, G.R. No. 106436, December 8, 1994, 239 SCRA 58.

[58] *Id.* at 65, citing 67A C.J.S. Parties, Sec. 4; citing *Peterson v. Sucro*, 93 F. 2d 878 and *Column v. Shinier*, 163 F. Supp. 347.

[59] G.R. No. L-64591. January 17, 1985, 134 SCRA 185.

[60] G.R. No. L-40098, August 29, 1975, 66 SCRA 425.

[61] *Supra* note 59 at 192-195.

[62] *Supra* note 57 at 64.

[63] Section 58. Civil Liability of Fraud in Connection with Securities Transactions. - Any person who engages in any act or transaction in violation of Sections 19.2, 20 or 26, or any rule or regulation of the Commission thereunder, shall be liable to any other person who purchases or sells any security, grants or refuses to grant any proxy, consent or authorization, or accepts or declines an invitation for tender of a security, as the case may be, for the damages sustained by such other person as a result of such act or transaction.

[64] SECURITIES REGULATION CODE, Sec. 26.

[65] *Securities and Exchange Commission v. Court of Appeals*. G.R. No. 106425 & 106431-32, July 21, 1995, 246 SCRA 738, 746.

Section 51.4. Every person who substantially assists the act or omission of any person primarily liable under Sections 57, 58, 59 and 60 of this Code, with knowledge or in reckless disregard that such act or omission is wrongful, shall be jointly and severally liable as an aider and abettor for damages resulting from the conduct of the person primarily liable: Provided, however, That an aider and abettor shall be liable only to the extent of his relative contribution in causing such damages in comparison to that of the person primarily liable, or the extent to which the aider and abettor was unjustly enriched thereby, whichever is greater.

[67] SECURITIES REGULATION CODE, Sec. 26.3

[68] *Rollo*, G.R. No. 179121, p. 66.

[69] Arturo M. Tolentino, *Commentaries on Jurisprudence on the Civil Code of the Philippines* (Vol. V, 1992), p. 493, citing 4 *Salvat* 392.

[70] Civil Case No. 02-1049 originally includes a prayer for revocation of registration and license of broker, dealer and salesmen. However, in an Order dated August 8, 2003, the RTC of Makati directed the parties to sever the afore-cited cause of action because it is not within the jurisdiction of the court. Respondents (Plaintiffs, therein) did not question the Order of the RTC of Makati and accordingly filed an amended complaint praying only for moral and exemplary damages and attorney's fees. *Rollo*, G.R. No. 179121. p. 273.

[71] *Id.* at 244.

[72] G.R. No. 166462, October 24, 2012, 684 SCRA 453.

[73] *Id.* at 467-468, citing *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 392-393.

[74] *Id.*

[75] *Uy v. Chua*, G.R. No. 183965, September 18, 2009, 600 SCRA 806, 817.

[76] CIVIL CODE,, Art. 1217.

[77] Jacinto v. Gumani, Jr., G.R. No. 191906, June 2, 2014, 724 SCRA 343, 356, citing Altres v. Empleo, G.R. No. 180986, December 10, 2008, 573 SCRA 583.

[78] SECURITIES REGULATION CODE, Sec. 63.

[79] SECURITIES REGULATION CODE, Sec. 53.

[80] SECURITIES REGULATION CODE, Sec. 54.

[81] SECURITIES REGULATION CODE, Sec. 63.

[82] Rafael A. Morales, The Philippine Securities Regulation Code (Annotated), 2005, p. 340.

[83]CA rollo, p. 95.

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