

NORTH GREENHILLS ASSOCIATION, INC., PETITIONER, V. ATTY. NARCISO MORALES, RESPONDENT.*G.R. No. 222821. August 09, 2017*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-222821/>**MENDOZA, J.:**

In this petition for review on certiorari with application for temporary restraining order and writ of preliminary injunction[1] filed under Rule 45 of the Rules of Court, petitioner North Greenhills Association, Inc. (NGA) seeks the review of the March 13, 2015 Decision[2] and February 3, 2016 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 131707, which affirmed the February 17, 2010 Decision[4] and August 8, 2013 Resolution[5] of the Office of the President (OP) in O.P. Case No. 08-1-004. The CA ruled in favor of respondent Atty. Narciso Morales (Atty. Morales), a resident of North Greenhills Subdivision, who filed a Complaint before the Housing and Land Use Regulatory Board (HLURB), docketed as HLURB Case No. HOA-A-050425-0014, against the NGA for allegedly blocking his side access to the community park.

Factual Antecedents

Atty. Morales is a resident of North Greenhills Subdivision in San Juan City. His house is located alongside Club Filipino Avenue and adjacent to McKinley Park, an open space/playground area owned and operated by NGA. He also has a personal access door, which he built through a wall separating his house from the park. This access door, when unlocked, opens directly into the park.

On the other hand, NGA, an association composed of members of the subdivision, organized to promote and advance the best interests, general welfare, prosperity, and safeguard the well-being of the owners, lessees and occupants of North Greenhills, is the undisputed owner of the park. It has acquired ownership thereof through a donation made by the original owner, Ortigas & Co. Ltd.

In June 2003, NGA started constructing a pavilion or kiosk occupying the side of the park adjacent to the residence of Atty. Morales. Part of the design was a public restroom intended to serve the needs of park guests and members of NGA. Said restroom was constructed alongside the concrete wall separating the house of Atty. Morales from the park.

Objecting to the construction of the restroom, Atty. Morales filed on July 23, 2003 a complaint before the HLURB, docketed as HLURB Case No. NCRHOA-072303-309. On August 13, 2013, he amended his complaint and additionally sought the demolition of the pavilion which was then being built.

In his Amended Complaint, Atty. Morales alleged that for a period spanning 33 years, he had an open, continuous, immediate, and unhampered access to the subdivision park through his side door, which also served as an exit door in case of any eventuality; that having such access to the park was one of the considerations why he purchased the lot; that the construction of the pavilion was illegal because it violated his right to immediate access to the park, Presidential Decree No. 957 and the Deed of Donation of Ortigas & Co. Ltd., which required

the park to be maintained as an open area; and that the restroom constructed by NGA was a nuisance per se.

NGA, in its Answer with Compulsory Counterclaim, rejected the assertions of Atty. Morales. It contended that as the absolute owner of the park, it had the absolute right to fence the property and impose reasonable conditions for the use thereof by both its members and third parties; that the construction of the restroom was for the use and benefit of all NGA members, including Atty. Morales; and that Atty. Morales' use of a side entrance to the park for 33 years could not have ripened into any right because easement of right of way could not be acquired by prescription. NGA likewise sought the payment of P878,778.40 corresponding to the annual membership dues which Atty. Morales had not been paying since 1980.

On April 13, 2003, the HLURB Arbiter conducted an ocular inspection of the park and noted that the construction started by NGA blocked Atty. Morales' side access to the park.

On February 16, 2005, the HLURB Arbiter rendered a Decision,[6] the decretal portion of which reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering respondents of the removal of the pavilion and the relocation of the common toilet in a place where it will not be a nuisance to any resident. Respondents are further directed to remove the obstruction to the side door of the complainant. All other claims and counterclaims are hereby dismissed for lack of merit.

IT IS SO ORDERED.[7]

NGA appealed to the HLURB Board of Commissioners (HLURB Board). In its November 22, 2007 Decision,[8] the HLURB Board modified the ruling of the HLURB Arbiter, thus:

Further, the complaint against respondent Alviar should be dropped as no acts have been particularly attributed to him in his personal capacity.

WHEREFORE, premises considered, the decision of the Regional Office is hereby MODIFIED. Accordingly, respondent NGA is ordered to relocate the restroom constructed or being constructed in the McKinley Park away from the walls of any resident and where it will not block complainant's side door access to the park.

SO ORDERED.[9]

NGA appealed to the Office of the President (OP).

On February 17, 2010, the OP rendered its decision, affirming in toto the ruling of the HLURB Board.

NGA moved for reconsideration, but its motion was denied by the OP in its August 8, 2013 Resolution.

Aggrieved, NGA filed a petition for review under Rule 43 of the Rules of Court before the CA, arguing that the OP erred in its findings.

Ruling of the CA

In its March 13, 2015 Decision,[10] the CA affirmed the ruling of the OP. It found no error on the part of the OP in affirming the characterization of the restrooms built as nuisance per accidens considering that the structure posed sanitary issues which could adversely affect not only Atty. Morales, but also his entire household; that even if there existed a perimeter wall between the park and Atty. Morales' home, the odor emanating from the restroom could easily find its way to the dining area, and the foul and noxious smell would make it very difficult and annoying for the residents of the house to eat; and that the proximity of the restroom to Atty. Morales' house placed the people residing therein at a greater risk of contracting diseases both from improperly disposed waste and human excrements, as well as from flies, mosquitoes and other insects, should NGA fail to maintain the cleanliness of the structures.

The CA stated that NGA's fear of being exposed to outsiders and criminals because Atty. Morales' access was unfounded. It pointed out that the door had been in existence for more than three decades and that if dangers truly existed, NGA should have taken immediate action and blocked the side access years earlier. It then pointed out other ways to remedy the security concerns of NGA, such as placing a wall strategically placed at the border of the park or additional guards to patrol the vicinity.

As to the counterclaim of NGA for association dues, the CA held that the claim was in the nature of a permissive counterclaim, which was correctly dismissed by the OP.

NGA moved for reconsideration, but its motion was denied by the CA in its February 3, 2016 Resolution.

Hence, this petition.

GROUND:

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN COMPLETELY DISREGARDING THE HLURB'S LACK OF JURISDICTION OVER THE INSTANT CASE.

(1)

RESPONDENT MORALES FAILED TO ALLEGE IN HIS COMPLAINT (OR AMENDED COMPLAINT) THAT HE IS A MEMBER OF NGA - A FATAL JURISDICTIONAL DEFECT FOR FAILURE TO PROPERLY LAY THE PREDICATE THAT WOULD HAVE ENABLED THE HLURB TO ACQUIRE JURISDICTION OVER THE INSTANT ACTION.

(2)

IN THE CASE OF STA. CLARA HOMEOWNERS' ASSOCIATION V. GASTON (G.R. NO. 141961, JANUARY 23, 2002), THE HONORABLE COURT RULED THAT WHERE THE BODY OF THE COMPLAINT FILED IN THE NOW HLURB FAILS TO MENTION THAT THE COMPLAINANT IS A MEMBER OF THE ASSOCIATION HE IS SUING, SUCH COMPLAINT MUST BE DISMISSED FOR LACK OF JURISDICTION.

(3)

PETITIONER NGA'S CLAIM FOR UNPAID ASSOCIATION DUES DOES NOT PRECLUDE IT FROM ASSAILING RESPONDENT'S MEMBERSHIP IN THE NGA.

(4)

IN THE CASE OF GREGORIO C. JAVELOSA V. COURT OF APPEALS (G.R. NO. 124292, DECEMBER 10, 1996), THE HONORABLE COURT RULED THAT "IT IS SETTLED THAT THE JURISDICTION OF COURTS OVER THE SUBJECT MATTER OF LITIGATION IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT. IT IS EQUALLY SETTLED THAT AN ERROR OF JURISDICTION CAN BE RAISED AT ANY TIME AND EVEN FOR THE FIRST TIME ON APPEAL."

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND IS MANIFESTLY MISTAKEN IN RULING THAT THE TOILET BUILT BY NGA AT THE MCKINLEY PARK IS A NUISANCE PER ACCIDENS, ON THE BASIS OF MERE SPECULATION, SUPPOSITION AND PURE CONJECTURE, CONSIDERING THE TOTAL LACK OF EVIDENCE ON RECORD TO PROVE SO.

(1)

RESPONDENT ATTY. MORALES DID NOT SET OUT TO PROVE THAT THE TOILET ADJACENT HIS HOUSE INJURED HIM OR THAT FOUL ODOR EMANATED FROM IT BECAUSE HE MISTAKENLY ALLEGED THAT THE TOILET WAS A NUISANCE PER SE.

(2)

BY FAILING TO ADDUCE EVIDENCE THAT THE TOILET, IN ANY WAY, ANNOYED RESPONDENT'S SENSES, OR THAT FOUL ODOR EMANATED FROM IT, OR THAT IT POSED SANITARY ISSUES DETRIMENTAL TO HIS FAMILY'S HEALTH - THE SUBJECT TOILET CANNOT BE LEGALLY CONSIDERED NUISANCE PER ACCIDENS.

(3)

INDEED, A CURSORY VIEW OF THE PERTINENT DISCUSSION IN THE ASSAILED DECISION REVEALS THAT THE COURT OF APPEALS SADLY TOOK THE PATH OF SPECULATION, SUPPOSITION AND PURE CONJECTURE IN JUSTIFYING ITS DECISION.

III.

THE ASSAILED 13 MARCH 2015 DECISION IS PATENTLY ERRONEOUS AS IT IS BASED ON GRAVE MISAPPREHENSION OF FACTS AND OF THE EVIDENCE - OR THE TOTAL LACK OF IT - ON RECORD.

(1)

INDEED, A PERUSAL OF THE RECORDS WOULD REVEAL THAT THERE WAS NO EVIDENCE WHATSOEVER ADDUCED BY THE RESPONDENT DEMONSTRATING THAT THE SUBJECT TOILET HAS CAUSED PHYSICAL ANNOYANCE OR DISCOMFORT TO HIM. NO TESTIMONY HAS EVER BEEN BROUGHT TO THE HLURB OR THE OFFICE OF THE PRESIDENT SHOWING THAT THE TOILET EMITTED ANY FOUL SMELL, OR ODOR, OR AT THE VERY LEAST, ANNOYED RESPONDENT MORALES EVERY TIME HE WOULD EAT IN HIS DINING AREA.

(2)

AS A MATTER OF FACT, IT IS WORTH TO NOTE THAT THE RESPONDENT DID NOT EVEN SUBMIT A POSITION PAPER BEFORE THE HLURB TO ATTEST TO AND PROVE SUCH FACTUAL MATTERS.

(3)

IN THE VERY CASE CITED BY THE COURT OF APPEALS, SMART COMMUNICATIONS V. ALDECOA (G.R. NO. 166330, SEPTEMBER 11, 2013), THE HONORABLE COURT STRUCK DOWN THE RULING OF THE LOWER COURT AND PRONOUNCED THAT A DECISION THAT DECLARES A THING TO BE A NUISANCE PER ACCIDENS MUST BE SUPPORTED BY FACTUAL EVIDENCE AND NOT BY MERE CONJECTURES OR SUPPOSITIONS.

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING RESPONDENT ATTY. MORALES' UNBRIDLED ACCESS TO MCKINLEY PARK, EFFECTIVELY CONSTITUTING AN EASEMENT OF RIGHT OF WAY WITHOUT ANY BASIS - AS AGAINST THE CLEAR STATUTORY RIGHT OF PETITIONER NGA, AS THE OWNER OF MCKINLEY PARK TO FENCE AND PROTECT ITS PROPERTY, GRANTED UNDER ARTICLES 429 AND 430 OF THE CIVIL CODE.

(1)

CONTRARY TO THE ASSAILED DECISION, IT IS NOT INCUMBENT UPON PETITIONER NGA TO PROVE THE LEGALITY OF ITS ACT OF CONSTRUCTING THE SUBJECT TOILET ON ITS OWN PROPERTY. INDEED, THIS IS A BASIS STATUTORY RIGHT OF NGA AS AN "OWNER".

(2)

RESPONDENT, ON THE OTHER HAND, BEING THE PROPONENT OF THE ACTION TO DECLARE THE TOILET A NUISANCE, IS THE ONE SADDLED BY LAW WITH THE RESPONSIBILITY OF PROVING THAT THE STRUCTURE BUILT BY NGA IS A NUISANCE. AS DISCUSSED, HOWEVER, RESPONDENT UTTERLY FAILED TO DISCHARGE SUCH BURDEN.

(3)

ARTICLE 430 OF THE CIVIL CODE GRANTS PETITIONER NGA OF ITS STATUTORY RIGHT TO FENCE OFF HIS PROPERTY. ART. 430 STATES THAT "EVERY OWNER MAY ENCLOSE OR FENCE HIS LAND OR TENEMENTS BY MEANS OF WALLS, DITCHES, LIVE OR DEAD HEDGES, OR BY ANY OTHER MEANS WITHOUT DETRIMENT TO SERVITUDES CONSTITUTED THEREON."

(4)

MOREOVER, ARTICLE 429 OF THE CIVIL CODE LIKewise GRANTS PETITIONER NGA THE RIGHT TO EXCLUDE OTHERS FROM ACCESS TO AND ENJOYMENT OF ITS PROPERTY.

V.

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT PETITIONER NGA'S COUNTERCLAIM TO COLLECT ON RESPONDENT'S UNPAID ASSOCIATION DUES FOR THE PAST THIRTY-THREE (33) YEARS, IS NOT COMPULSORY BUT MERELY PERMISSIVE.

(1)

AS A PERSON SUING NGA FOR THE EXERCISE OF HIS RIGHTS AS AN ALLEGED MEMBER THEREOF, NGA'S DEFENSE WILL, AS A MATTER OF COURSE, INVOLVE THE CONTEST OF SUCH RIGHT. IN ORDER FOR NGA TO CONTEST RESPONDENT'S RIGHT TO USE THE PARK AS A MEMBER OF NGA, THE LATTER HAS NO OTHER ALTERNATIVE BUT TO RAISE HIS NON-PAYMENT OF MEMBERSHIP DUES IN ORDER TO ATTACK HIS RIGHT TO USE THE PARK, WHICH RIGHT INEXTRICABLY ARISES OUT OF HIS STANDING AS AN ALLEGED MEMBER OF NGA.

(2)

AS A MATTER OF FACT, REPUBLIC ACT NO. 9904, OTHERWISE KNOWN AS THE "MAGNA CARTA FOR HOMEOWNERS AND HOMEOWNERS' ASSOCIATIONS" MAKES IT A CONDITION SINE QUA NON THAT THE HOMEOWNER MUST PAY THE ASSOCIATION FEES AND CHARGES BEFORE HE CAN ENJOY ITS FACILITIES.[11]

In its Resolution,[12] dated May 30, 2016, the Court required respondent to file his Comment on the petition. To date, no Comment has been filed. For said reason, the Court deemed, as it hereby deems, that respondent had waived his right to file one.

ISSUES

1.

WHETHER THE CA CORRECTLY RULED THAT THE HLURB HAD JURISDICTION OVER THE COMPLAINT FILED BY ATTY. MORALES;

2.

WHETHER THE CA CORRECTLY RULED THAT THE RESTROOM BUILT BY NGA INSIDE THE MCKINLEY PARK IS A NUISANCE PER ACCIDENS;

3.

WHETHER NGA HAS THE RIGHT TO BLOCK ATTY. MORALES' ACCESS TO THE PARK; AND

4.

WHETHER THE CA CORRECTLY RULED THAT THE COUNTERCLAIM OF NGA AGAINST ATTY. MORALES FOR UNPAID ASSOCIATION DUES WAS A PERMISSIVE COUNTERCLAIM.

The Ruling of the Court

The Court partly grants the petition.

On Jurisdiction

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined from the allegations contained in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Once vested by the allegations in the complaint, jurisdiction remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[13]

Relative thereto is the rule that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings.[14] Jurisdiction over the subject matter is conferred only by the Constitution or the law.[15] It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal.[16]

NGA claims that the HLURB never had jurisdiction over the complaint filed by Atty. Morales considering that there was no allegation that he was member of the association, entitling him to claim the use of the latter's facilities including the right of access to McKinley Park. Citing *Sta. Clara Homeowner's Association v. Gaston*,[17] NGA asserts that for HLURB to acquire jurisdiction over disputes among members of an association, it is a requirement that the allegation of membership must be clear in the complaint, otherwise, no authority to hear and decide the case is vested in the concerned agency. Membership in a homeowners' association is voluntary and cannot be unilaterally forced by a provision in the association's articles of incorporation or by-laws, which the alleged member did not agree to be bound to.[18]

In this case, it appears that Atty. Morales, by filing his complaint as a member whose rights have been allegedly violated, has satisfied such requirement. His status as a member has not been questioned. It is worthy to note that NGA, in its counterclaim, demanded the payment of association dues from Atty. Morales as he has been refusing

to pay his dues for more than three decades. In sum, there is no dispute that Atty. Morales is a member of NGA, albeit a delinquent member. In *Tumpag v. Tumpag*,^[19] the Court said:

Generally, the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction. There may be instances, however, when a rigid application of this rule may result in defeating substantial justice or in prejudice to a party's substantial right. In *Marcopper Mining Corp. v. Garcia*, we allowed the RTC to consider, in addition to the complaint, other pleadings submitted by the parties in deciding whether or not the complaint should be dismissed for lack of cause of action. In *Guaranteed Homes, Inc. v. Heirs of Valdez, et al.*, we held that the factual allegations in a complaint should be considered in tandem with the statements and inscriptions on the documents attached to it as annexes or integral parts.^[20] [Citations omitted]

Considering that the requirement of membership is present, jurisdiction over the subject matter of the case was properly vested in the HLURB.

On the finding that the restroom was a nuisance per accidens

The CA in disposing the case, ruled that the restroom posed sanitary issues to Atty. Morales and is, therefore, a nuisance per accidens. Such is a finding of fact, which is generally conclusive upon the Court, because it is not its function to analyze and weigh the evidence all over again.

There are, however, well-recognized exceptions. These are (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[21]

NGA avers that the case falls under the said exceptions considering that no proof was ever presented to prove that the restroom was a nuisance per accidens. Absent such evidence, the CA's finding was only speculative, resulting in a grave misapprehension of facts.

The Court agrees.

A nuisance per accidens is one which depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance.^[22] Obviously, it requires a determination of such circumstances as to warrant the abatement of the nuisance. That can only be done with reasonable notice to the person alleged to be maintaining or doing the same of the time and place of hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance per accidens.^[23]

In other words, it requires a proper appreciation of evidence before a court or tribunal rules that the property being maintained is a nuisance per accidens.

A reading of the CA's decision would easily reveal that its conclusions were merely speculative. It wrote:

The said toilet, to Our mind, poses sanitary issues which could adversely affect not only the Respondent but his entire household as well. Even if there exists a perimeter wall between Respondent's house and the toilet, the odor emanating from the latter could easily find its way to the dining area, and the foul and noxious smell would make it very difficult and annoying for the residents of the house to eat. Moreover, the proximity of the toilet to Respondent's house places the people residing therein at greater risk of contracting diseases both from improperly disposed waste and human excrements, as well as from flies, mosquitoes, and other insects, should petitioner NGA fail to maintain the cleanliness in the said structure. Verily, the determining factor when the toilet is the cause of the complaint is not how much it smells or stinks but where it is located as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities.[24]

By the use of the words "would, should, could," it can be discerned that the CA was not even sure that the restroom has caused such annoyance to Atty. Morales or his family. Its declaration that the restroom is a nuisance per accidens had no basis in evidence. There is nothing in the records which discloses that Atty. Morales had introduced any evidence, testimonial or documentary, to prove that the restroom annoyed his senses, that foul odor emanated from it, or that it posed sanitary issues detrimental to his family's health. No certification by the City Health Officer was even submitted to the HLURB to attest on such matters.

It was improper on the part of the CA to assume those negative effects because modern day restrooms, even those for the use of the public, are clean, safe and emitting no odor as these are regularly maintained. For said reason, it was an error on the part of the CA to rule that the restroom was a nuisance per accidens and to sustain the order that it should be relocated.

Clearly, its finding was based on speculations, and not evidence.

On the finding that Atty.
Morales had no access to
to McKinley Park

NGA claims that the CA erred in upholding Atty. Morales' unbridled access to the park, which effectively constituted an easement of right of way without any basis as against the clear statutory right of NGA, as the owner of the park, to fence and protect its property on the basis of Articles 429 and 430 of the Civil Code.

The Court agrees with NGA.

Under the Civil Code, NGA, as owner of the park, has the right to enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon. It also has a right to exclude others from access to, and enjoyment of its property.

NGA's legal right to block the access door is beyond doubt. Courts have no business in securing the access of a person to another property absent any clear right on the part of the latter.

The CA essentially violated the right of NGA. Atty. Morales never introduced any evidence that he had acquired any right by prescription or by agreement or legal easement to access the park through his side door. Moreover, he never claimed that his side door was his only access to the park. He has other means and, being adjacent to the park, going through other means is not cumbersome.

The conditions[25] set forth under the Deed of Donation by Ortigas & Co. Ltd. to NGA could not be used by Atty. Morales in his favor. Assuming that he has a right as a member to use the park, it does not mean that he can assert that his access to the park could only be done through his side door. Atty. Morales knows very well that he can access the park through some other parts of the park.

Counterclaim for unpaid dues was a

permissive one and, therefore, the affirmation of its dismissal was proper

A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiffs complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive.[26]

The Court has held that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.[27]

The criteria to determine whether the counterclaim is compulsory or permissive are as follows:

(a)

Are issues of fact and law raised by the claim and by the counterclaim largely the same?

(b)

Would res judicata bar a subsequent suit on defendants claim absent the compulsory rule?

(c)

Will substantially the same evidence support or refute plaintiffs claim as well as defendant's counterclaim?

(d)

Is there any logical relations between the claim and the counterclaim?

A positive answer to all four questions would indicate that the counterclaim is compulsory.[28] Otherwise, the same is permissive.

Here, the main issues in the complaint are limited only to the propriety of barring Atty. Morales from accessing the park through the side door and whether the restroom constructed by NGA is a nuisance per se. On the other hand, the counterclaim is simply concerned with collecting from Atty. Morales his unpaid association dues for the past thirty (30) years. Suffice it to state that payment or non-payment of association dues are distinct matters that do not relate to whether the main cause of Atty. Morales against NGA was proper. Whether there was payment or otherwise is irrelevant to the main issues considering that the pleadings filed by the parties essentially reflected an admission of membership of Atty. Morales in the association. The failure to raise the issue of unpaid association dues in this case or its dismissal if properly raised will not be a bar to the filing of the appropriate separate action to collect it.

WHEREFORE, the petition is PARTLY GRANTED. The March 13, 2015 Decision and the February 3, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 131707, are REVERSED insofar as it affirmed (1) Atty. Morales' entitlement to an unbridled access to the park through his side door; and (2) the order to relocate the restroom to another area.

SO ORDERED.

Carpio, (Chairperson), Peralta, Leonen, and Martires, JJ., concur.

[1] Rollo, pp. 17-61.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Magdangal M. De Leon and Nina G. Antonio-Valenzuela, concurring, id. at 66-76.

[3] Id. at 78-79.

[4] Penned by Deputy Executive Secretary for Legal Affairs, Natividad G. Dizon, id. at 185-191.

[5] Penned by Deputy Executive Secretary for Legal Affairs, Michael G. Aguinaldo, id. at 232-233.

[6] Id. at 139-142.

[7] Id. at 141.

[8] Id. at 161-167.

[9] Id. at 167.

[10] Id. at 66-76. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Magdangal M. De Leon and Nina G. Antonio-Valenzuela, concurring.

[11] Id. at 18-22.

[12] Id. at 672-673.

[13] *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 629 (2011).

[14] *Sps. Pasco v. Pison-Arceo Agricultural and Development Corp.*, 520 Phil. 387 (2006).

[15] *Sps. Genato v. Viola*, 625 Phil. 514 (2010).

[16] *La Naval Drug Corporation v. Court of Appeals*, 306 Phil. 84, 96 (1994).

[17] 425 Phil. 221 (2002).

[18] Id.

[19] 744 Phil. 423 (2014).

[20] Id. at 430-431.

[21] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990).

[22] *Rana v. Wong*, 737 Phil. 364, 376-377 (2014), citing *Salao v. Santos*, 67 Phil. 547, 550-551 (1939).

[23] *Monteverde v. Generoso*, 52 Phil. 123 (1928).

[24] Rollo, p. 73.

[25] WHEREAS, the DONOR has agreed to donate to the DONEE, the parcels of land hereinabove described in view of the fact that the members of the DONEE, their families, domestic help, and related persons are the principal users of the streets, park, and other properties within the Greenhills IV Subdivision, being directly affected by any improper use or deterioration. DONOR therefore finds it proper that DONEE should own the

properties subject of this Deed in order to control and regulate their use under their own conditions and restrictions.

[26] Bungcayao, Sr. v. Fort Ilocandia Property Holdings and Development Corporation, 632 Phil. 391 (2010), citing Cruz-Agana v. Hon. Santiago-Lagman, 495 Phil. 188 (2005).

[27] Id., citing Lafarge Cement Phil, Inc. v. Continental Cement Corp., 486 Phil. 123 (2004), further citing Quintanilla v. CA, 344 Phil. 811 (1997) and Alday v. FGU Insurance Corporation, 402 Phil. 962 (2001).

[28] Id., citing Lafarge Cement Phil, Inc. v. Continental Cement Corp., 486 Phil. 123 (2004) further citing Quintanilla v. CA, 344 Phil. 811 (1997) and Alday v. FGU Insurance Corporation, 402 Phil. 962 (2001), citing NAMARCO v. Federation of United Mamarco Distributors, 151 Phil. 338 (1973).

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