

**DANTE Y. GO, PETITIONER, VS. HON. FERNANDO CRUZ, JUDGE, ETC.,
CITY SHERIFF OF CALOOCAN CITY, AND CALIFORNIA
MANUFACTURING CO., INC., RESPONDENTS.**

G.R. No. 58986. April 17, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

The dismissal of civil actions is always addressed to the sound judgment and discretion of the court; this, whether the dismissal is sought after a trial has been completed or otherwise,[1] or whether it is prayed for by a defending party,[2] or by a plaintiff or claimant.[3] There is one instance however where the dismissal of an action rests exclusively on the will of a plaintiff or claimant, to prevent which the defending party and even the court itself is powerless, requiring in fact no action whatever on the part of the court except the acceptance and recording of the causative document. This is dealt with in Section 1, Rule 17 of the Rules of Court, which reads as follows:

SECTION 1. Dismissal by the plaintiff -- An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. A class suit shall not be dismissed or compromised without approval of the court.

It is this provision with which the proceedings at bar are chiefly concerned.

On October 26, 1981, California Manufacturing Co., Inc. (hereinafter, simply, California) brought an action in the Court of First Instance of Manila against Dante Go, accusing him of unfair competition. 1 The gravamen of California's complaint was that Dante Go, doing business under the name and style of "Sugarland International Products," and engaged like California in the manufacture of spaghetti, macaroni, and other pasta, was selling his products in the open market under the brand name, "Great Italian," in packages which were in colorable and deceitful imitation of California's containers bearing its own brand, "Royal." Its complaint contained an application for preliminary injunction commanding Dante Go to immediately cease and desist from the further manufacture, sale and distribution of said products, and to retrieve those already being offered for sale. 2

About two weeks later, however, or on November 12, 1981, California filed a notice of dismissal with the Court reading as follows: 3

COMES NOW the plaintiff in the above-entitled case, through undersigned counsel, and unto this Honorable Court most respectfully gives notice of dismissal without prejudice pursuant to Sec. 1, Rule 17 of the Rules of Court.

WHEREFORE, it is respectfully prayed that the above-entitled case be considered dismissed without prejudice conformably with Sec. 1, Rule 17 of the Rules of Court.

Four days afterwards, or on November 16, 1981, California received by registered mail a copy of Dante Go's answer with counterclaim dated November 6, 1981, which had been filed with the Court on November 9, 1981.⁴

On November 19, 1981 a fire broke out at the Manila City Hall destroying among others the sala of Judge Tengco and the records of cases therein kept, including that filed by California against Dante Go. ⁵

On December 1, 1981, California filed another complaint asserting the same cause of action against Dante Go, this time with the Court of First Instance at Caloocan City.⁶ This second suit was docketed as Civil Case No. C-9702 and was assigned to the branch presided over by Judge Fernando A. Cruz.

On December 3, 1981, Judge Cruz issued an ex parte restraining order directing "the defendant ** to immediately cease and desist from the further manufacture, sale, promotion and distribution of spaghetti, macaroni and other pasta products contained in packaging boxes and labels under the name 'GREAT ITALIAN,' which are similar to or copies of those of the plaintiff, and ** recall ** all his spaghetti, macaroni and other pasta products using the brand, 'GREAT ITALIAN.'" ⁷

On the day following the rendition of the restraining order, Dante Go filed the present petition for certiorari, etc. with this Court praying for its nullification and perpetual inhibition. On December 11, 1981, this Court, in turn, issued a writ of preliminary injunction restraining California, Judge Cruz and the City Sheriff from enforcing or implementing the restraining order of December 3, 1981, and from continuing with the hearing on the application for preliminary injunction in said Civil Case No. C-9702. The scope of the injunction was subsequently enlarged by this Court's Resolution of April 14, 1982 to include the City Fiscal of Manila, who was thereby restrained from proceeding with the case of unfair competition filed in his office by California against Dante Go.¹

Dante Go's thesis is that the case filed against him by California in the Manila Court remained pending despite California's notice of dismissal. According to him, since he had already filed his answer to the complaint before California sought dismissal of the action three (3) days afterwards, such dismissal was no longer a matter of right and could no longer be effected by mere notice in accordance with Section 1, Rule 17 of the Rules of Court, but only on plaintiff's motion, and by order of the Court; hence, the Caloocan Court acted without jurisdiction over the second action based on the same cause. He also accused California of forum shopping, of selecting a sympathetic court for a relief which it had failed to obtain from another. ²

The petitioner is in error. What marks the loss by a plaintiff of the right to cause dismissal of the action by mere notice is not the filing of the defendant's answer with the Court (either personally or by mail) but the service on the plaintiff of said answer or of a motion for summary judgment. This is the plain and explicit message of the Rules.³ "The filing of pleadings, appearances, motions, notices, orders and other papers with the court," according to Section 1, Rule 13 of the Rules of Court, means the delivery thereof to the clerk of the court either personally or by registered mail. Service, on the other hand, signifies delivery of the pleading or other paper to the parties affected thereby through their counsel of record, unless delivery to the party himself is ordered by the court, ⁴ by any of the modes set forth in the Rules, i.e., by personal service,⁵ service by mail, ⁶ or substituted service. ⁷

Here, California filed its notice of dismissal of its action in the Manila Court after the filing of Dante Go's answer but before service thereof. Thus having acted well within the letter and contemplation of the afore-quoted Section 1 of Rule 17 of the Rules of Court, its notice ipso facto brought about the dismissal of the action then pending in the Manila Court, without need of any order or other action by the Presiding Judge. The dismissal was effected without regard to whatever reasons or motives California might have had for bringing at about, and was, as the same Section 1, Rule 17 points out, "without prejudice," the contrary not being otherwise "stated in the notice" and it being the first time the action was being so dismissed.

There was therefore no legal obstacle to the institution of the second action in the Caloocan Court of First Instance based on the same claim. The filing of the complaint invested it with jurisdiction of the subject matter or nature of the action. In truth, and contrary to what petitioner Dante Go obviously believes, even if the first action were still pending in the Manila Court, this circumstance would not affect the jurisdiction of the Caloocan Court over the second suit. The pendency of the first action would merely give the defendant the right to move to dismiss the second action on the ground of *auter action pendant*, or *litis pendentia*.¹

WHEREFORE, the petition is DISMISSED, with costs against petitioner. The temporary restraining order of December 11, 1981, and the amendatory Resolution of April 14, 1982 are SET ASIDE.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] E.g., as on demurrer to evidence, in accordance with Rule 35 of the Rules of Court, or by motion to dismiss by a defending party in accordance with Rule 16, or Sec. 3, Rule 17,, or at the instance of the plaintiff pursuant to Sec. 2 of Rule 17

[2] Rule 16, and Sec. 3, Rule 17, Rules of Court, *supra*

[3] Sec. 2, Rule 17, Rules of Court, *supra*

1 The action was docketed as Case No. 144362 and was assigned to Branch XV then presided over by Hon. Ernesto Tengco

2 Rollo, p. 19

3 *Id.*, p. 112

4 *Id.*, pp. 62-72, 222,293

5 *Id.*, p. 157, 173

6 *Id.*, pp. 22-35

7 *Id.*, p. 53

1 I.S. No. 81-26997

2 Rollo, p.199

3 Sec. 1, Rule 17, *supra*

4 Sec. 2, Rule 13

5 Sec. 4, Rule 13

6 Sec. 5, Rule 13

7 Sec. 6, Rule 13

1 Sec. 1(e), Rule 16, Rules of Court, i.e.: "That there is another action pending between the same parties for the same cause; "SEE *Buan v. Lopez*, 145 SCRA 34 (1986), *Laroza v. Guia*, 134 SCRA 341 (1985)

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