

**INVESTORS' FINANCE CORPORATION, DOING BUSINESS
UNDER THE NAME AND STYLE FNCB FINANCE;
PETITIONER-APPELLANT, VS. ROMEO EBARLE, HON. JOSE L.
CASTIGADOR, PRESIDING JUDGE, RTC, BR...**

G.R. No. 70640. June 29, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a Petition for Review on Certiorari of the decision of the then respondent Intermediate Appellate Court[*] sustaining the order of the trial court.[**]

These are the facts:

On January 7, 1980, in Ozamis City, Flaviano Fucoy, Jr., for value received, executed a promissory note[1] in favor of Lido Motor Sales Ozamis in the amount of P56,976.00 which he promised to pay in 48 equal, successive, monthly installments. Jose Mariano O. Tan signed the promissory note as a co-maker. On the same day, to guarantee the payment of the promissory note in accordance with its terms, the promissors executed a chattel mortgage[2] over the purchased car in favor of the promisee. Also, on the same date, mortgagee Lido Motor Sales Ozamis executed a Deed of Assignment[3] of all its title, rights, equities, and interests (excluding obligations to the buyers for services and warranties which the mortgagee-assignor retained) to, in, and/or arising out of the Deed of Chattel Mortgage with promissory note, in favor of Investors' Finance Corporation, the herein petitioner.

For non-payment of four (4) monthly installments the petitioner corporation, as mortgagee, filed a verified Complaint For Replevin With Damages[4] in the then Court of First Instance of Misamis Oriental, 15th Judicial District, Branch I (later became Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch XVII, Cagayan de Oro City, after the judicial reorganization of 1983) against Flaviano Fucoy, Jr., Jose Mariano Tan, and a John Doe, docketed as CIVIL CASE NO. 8782, with a prayer for the issuance of a writ of replevin for the seizure of the car "for the purpose of foreclosure and/or disposal in accordance with law to satisfy defendants' obligation to the plaintiff." [5] Additionally, the plaintiff, the petitioner herein, prayed for attorney's fees, liquidated damages, and costs. [6] There is no alternative prayer for a sum of money in this complaint contrary to the finding of the respondent court. The plaintiff filed a good and sufficient bond, approved by the trial court, in the amount of P25,146.34, which is double the value of the car, the subject property. [7]

On October 5, 1982, the then Court of First Instance of Misamis Oriental, 15th Judicial District, Branch I, Cagayan de Oro City, issued the writ of replevin. [8] The writ could not be implemented because the car was not in the possession of the mortgagors-defendants. It was only more than a year later that the car was found in the possession of the herein private respondent, Romeo Ebarle, of Pagadian City. [9] Due to the difficulty, not to say danger, of getting the car from him because of his bodyguards, Romeo Ebarle being the son of former Provincial Governor Bienvenido Ebarle, a prominent political mogul not only in Pagadian City but also in the province of

Zamboanga del Sur and in the entire Region IX, and the brother of the then incumbent Assemblyman representing Region IX, Renato Ebarle,[10] the petitioner filed a Motion For Approval To Deputize And Authorize A Military Personnel To Serve The Alias Writ Of Replevin And Alias Summons.[11] The motion was granted.[12]

On October 17, 1983, the trial court appointed Technical Sergeant (TSgt., for short) Antonio Ibonia of the Philippine Constabulary as special deputy sheriff and authorized him "to serve the alias summons and alias writ of replevin issued in this case (C.C. No. 8782) on the defendants at their respective addresses." [13]

On October 19, 1983, TSgt. Ibonia, as special deputy sheriff to serve the summons and implement the Alias Writ of Replevin, seized the car and placed it in the custody of the military authorities at Tubod, Lanao del Norte for safekeeping. On the following day, as a result of a written agreement between the lawyers of the petitioner and the private respondent, stipulating payment by the latter of the balance of the mortgage indebtedness incurred originally by Flaviano Fucoy, Jr. and Jose Mariano Tan, subject to verification by the petitioner's counsel as to the correctness of the amount, the car was returned to the private respondent.[14]

Evidently, mortgagors Flaviano Fucoy, Jr. and Jose Mariano Tan transferred the possession of the car to private respondent Romeo Ebarle without the consent of the petitioner. (The petitioner claims that it would "never agree" to such a transfer "because the credit standing of respondent Ebarle was no longer good due to previous account he had with petitioner which was delinquent forcing petitioner to foreclose on the mortgage" of two units of Isuzu dump trucks.) [15] Thus the car remained registered in the name Flaviano Fucoy, Jr., even when it was seized by Special Deputy Sheriff Ibonia, under Registration Certificate No. RCM368382 of the Ozamiz LTC Office.[16]

In the second week of November, 1983, the petitioner sent to the private respondent a computation of the unpaid balance due from the mortgagors, which turned out to be higher than the computation at Tubod, Lanao del Norte. The private respondent refused to pay.[17]

On December 13, 1983, the private respondent commenced a suit for Damages and Discharge of Chattel Mortgage with Preliminary Injunction in the Regional Trial Court, 9th Judicial Region, Branch XXII, Pagadian City, docketed as Civil Case No. 2312, against the petitioner, Investors' Finance Corporation, and Special Deputy Sheriff Antonio Ibonia, who enforced the writ of replevin on October 19, 1983.[18]

In his complaint, the private respondent alleged that he was a well-known personality in Pagadian City, he being the son of the former governor of the province and a brother of an assemblyman; that he had paid his obligations to the petitioner but it refused to issue a receipt; and that he was humiliated and embarrassed by the seizure of his car. He prayed "(T)hat pending hearing of the main case a writ of preliminary injunction be issued against the defendants" (herein petitioner and Special Deputy Sheriff Ibonia), that "the chattel mortgage of the car be discharged," and for moral and corrective damages, attorney's fees, and a general prayer "for other remedies and relief provided for under the law under the present circumstance." [19]

The petitioner, one of the two defendants in Civil Case No. 2312, filed its answer, dated February 21, 1984, in which the pendency of Civil Case No. 8782 in the Regional Trial Court of Misamis Oriental is averred with specificity, a copy of the complaint thereof having been attached thereto as Annexes 5, 5-A, 5-B, 5-C, 5-D and 5-E. In the said answer, the petitioner herein prayed for the dismissal of the case.[20] In a subsequent Motion For Preliminary Hearing Of Affirmative Defense As If A Motion To Dismiss Have (Sic) Been Filed,[21] the petitioner reiterated in its answer the averment of the "pendency of another action involving the same parties, interests, rights and vehicle." And invoking Section 5 of Rule 16 of the Rules of Court,[22] it moved that a preliminary hearing be had as if a motion to dismiss had been filed and prayed for the dismissal of the complaint on the ground of *litis pendentia* provided in Section 1 (e) of the same Rule 16.[23]

After the filing of the Opposition and Rejoinder, on November 15, 1984, the respondent trial court issued a writ of preliminary mandatory injunction requiring the petitioner to return the car even while its motion to dismiss had not yet been resolved.[24]

The petitioner filed a petition for certiorari with the respondent Intermediate Appellate Court questioning the denial of its Motion For Preliminary Hearing Of Affirmative Defense As If A Motion To Dismiss Have (Sic) Been Filed and the issuance in favor of Ebarle of a writ of preliminary mandatory injunction although the car was not in its possession.[25]

The respondent Intermediate Appellate Court dismissed the petition stating thus:

We find the petition without merit. Since after all, petitioner claims it does not have the car, the writ of preliminary mandatory injunction cannot possibly be enforced. Petitioner, according to it simply does not have the car which thru the writ is sought to be returned. Now then with respect to the "motion to dismiss," We find no abuse, much less a grave abuse of discretion on the part of the respondent Judge for having denied the same: firstly, Civil Case No. 2312, includes a contempt charge, one not found in Civil Case No. 8782; secondly, there is a defendant in Civil Case No. 2312, Antonio Ibonia, who is not a party in the other case. Certain requisites of *litis pendentia* are therefore absent.[26]

The petitioner's Motion for Reconsideration was denied,[27] hence this petition.

We rule for the petitioner.

The respondent Intermediate Appellate Court committed a reversible error in denying the application of the principle of *lis pendens* duly invoked by the petitioner.

An action is dismissable on the ground that there is another action pending between the same parties for the same cause, if the following requisites concur:

- a) identity of parties, or at least such as representing the same interests in both actions;
- b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and
- c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[28]

Corollary to Section 1 (e) of Rule 16 of the Rules of Court is the prohibition against splitting a single cause of action. Thus, under Section 4, Rule 2, (I)f two or more complaints are brought for different parts of a single cause of action, the filing of the first may be pleaded in abatement of the other or others, in accordance with Section 1(e) of Rule 16, and a judgment upon the merits in any one is available as a bar in the others. The former is the principle of *litis pendentia* or *lis pendens*, while the latter is that of *res judicata*.

The doctrine of *res judicata* requires, among others, identity of parties as an indispensable condition. However, this identity does not mean total identity of all parties. For we already had ruled on various occasions[29] that the inclusion of new parties in the second action does not remove the case from the operation of the doctrine of *res judicata* if the party against whom the judgment is offered in evidence was also the party in the first action. This rule would ward off the possibility of renewing the litigation between the same parties by the mere expedient of bringing in new parties in the second action.

Like *res judicata* as a doctrine, *litis pendentia* as a principle is also a sanction of the public policy against multiplicity of suits. This being so, the inclusion of another party does not by itself preclude the application of Section 1 (e) Rule 16 assuming that all the requisites are present. Otherwise stated, the inclusion of new parties in the second action does not remove the case from the operation of the rule of *litis pendentia* so long as the primary

litigants are also parties in the first action. A different rule would render illusory the principle of *litis pendentia*. The facility of its circumvention is not difficult to imagine given the resourcefulness of lawyers.

In Civil Case No. 8782 before the then Court of First Instance of Misamis Oriental, 15th Judicial District, Branch XVII, Cagayan de Oro City, the plaintiff is the petitioner corporation and the defendants are Flaviano Fucoy, Jr., Jose Mariano Tan, and a John Doe. John Doe, later, turned out to be private respondent Romeo Ebarie who was the unauthorized transferee but in actual possession of the car. In Civil Case No. 2312 before the Regional Trial Court, 9th Judicial District, Branch XXII, Pagadian City, the plaintiff is the same private respondent Romeo Ebarle while the defendants are the petitioner corporation and Antonio Ibonia, the Special Deputy Sheriff, an officer of the law who enforced the writ of replevin in compliance with the order of the then Court of First Instance of Misamis Oriental, Branch XVII, at Cagayan de Oro City. It is clear that Ibonia is not a real party-in-interest in the Pagadian case. There, the real parties in interest, the principal protagonists are Investors' Finance Corporation and Romeo Ebarle. They are the same identical real parties- in-interest, the principal protagonists in the Cagayan de Oro case. This concurrence suffices to satisfy the requirement of identity of parties in the principle of *litis pendentia*.

We also find identity of the rights asserted in both cases.

The contempt charge in the Pagadian City case deserves scant consideration. It is merely an incident of the alleged non-compliance of the preliminary mandatory injunction by the Branch Manager and lawyer of the petitioner as well as the Special Deputy Sheriff.

The true subject matter of the controversy is the car (Corolla, 4-door deluxe Sedan, bearing Engine No. 4k-5021908). The primary objective of the plaintiff, the petitioner herein, in the Cagayan de Oro case is the enforcement of the chattel mortgage due to non-payment of the balance of the purchase price of the said car. On the other hand, the plaintiff, the private respondent herein, in the Pagadian case, seeks as his primordial relief, the discharge of the chattel mortgage over the same car due to alleged full payment of all the installments on the price of the same. By way of initial reliefs, the plaintiff in the Cagayan de Oro case (defendant in the Pagadian case and petitioner herein) prayed for the issuance of a writ of replevin to take possession of the car in order to foreclose the chattel mortgage thereon as the plaintiff in the Pagadian case (defendant in the Cagayan de Oro case and private respondent herein) sought an injunction to restrain the taking of the same car. The denial of the motion to dismiss filed by the herein petitioner before the Pagadian court, resulted to a chaotic as well as a ridiculous situation for the parties. As the Cagayan de Oro court issued, on March 30, 1984, a Second Alias Writ Of Replevin^[30] for the seizure of the car to be disposed of according to the Chattel Mortgage Law, the Pagadian court, also issued, more than seven months later, a preliminary mandatory injunction^[31] ordering the Deputy Provincial Sheriff of Zamboanga del Sur "to take possession of the subject property (the car) x x x and forthwith deliver it to the plaintiff" (private respondent herein). Before that, on May 9, 1984, the Pagadian court already issued a Temporary Restraining Order,^[32] ordering the herein petitioner and its agents not to seize the said car. To all legal intents and purposes, the Pagadian court issued a second writ of replevin to counteract and to annul the writ of replevin validly issued seven and a half months earlier by a coordinate and co-equal tribunal — the Cagayan de Oro court — which has already taken jurisdiction. Worse, the Pagadian court practically dismissed the case pending in the Cagayan de Oro court, pronouncing that "the replevin case, Civil Case No. 8782, Regional Trial Court, Cagayan de Oro City appears, to all practical intents and purposes to have been terminated."^[33] We can not allow that. We can not countenance the spectacle of two co-equal courts racing with each other to pre-empt judgment over the same subject matter of the two pending actions. The resulting confusion in the event that the decisions, orders, or resolutions of the two courts contradict and conflict with each other would do great damage to the administration of justice.

An action for damages against the person obtaining the writ of replevin and the sheriff who enforced the writ of replevin, assuming that the seizure of the property was unlawful, should be litigated in the replevin suit and not by independent action. Thus, we ruled in *Erlanger and Galinger, Inc., et al. v. Villamor, et al.*[34] that any claim for damages due to the seizing of property in replevin, the action being still pending and undetermined, should be litigated in the replevin suit and not by independent action. The doctrine is undisputed that no court has the power to interfere by injunction with the judgment or orders of another court of concurrent or coordinate jurisdiction having power to grant the relief sought by injunction.[35]

Moreover, under Section 2 of Rule 60 of the Revised Rules of Court, delivery of personal property subject matter of the controversy should be made on orders of the court only if the plaintiff puts up a bond double the value of the property as stated in his affidavit. This replevin bond answers for the damages that may be awarded to the defendant in case the action will not prosper.[36] In the Cagayan de Oro court, the petitioner filed a bond as required.[37]

We take note that the filing of Civil Case No. 2312 before the Pagadian Court was a "specie of forum-shopping"[38] considering that the private respondent is an influential person in the locality. The respondent trial judge was not perspicacious enough to notice this unethical and contumacious act.

WHEREFORE, the Petition is hereby GRANTED. The Decision of the then Intermediate Appellate Court is REVERSED and Civil Case No. 2312 of the Regional Trial Court, 9th Judicial District, Branch XXII, Pagadian City is hereby ordered DISMISSED without prejudice to the prosecution of the claim for damages for wrongful replevin in Civil Case No. 8782 of the Regional Trial Court of Misamis Oriental, Branch XVII, Cagayan de Oro City.

This Decision is IMMEDIATELY EXECUTORY. No motion for extension of time to file a motion for reconsideration will be granted.

Costs against the private respondent. SO ORDERED.

Yap, C. J. and Melencio-Herrera, J., concur.

Paras and Padilla, JJ., took no part in the deliberations.

[*] Paras, Edgardo L., J., ponente; Mendoza, Vicente, J. and Javellana, Luis A., JJ., Concurring.

[**] Judge Jose L. Castigador, presiding, Regional Trial Court, 9th Judicial District, Branch XXII, Pagadian City.

[1] Rollo, 31.

[2] Id., 32.

[3] Id., 33.

[4] Id., 52-57.

[5] Id., 54.

[6] Id., 54-55.

[7] Id., 54, 58.

[8] Id., 72.

[9] Id., 61.

[10] Id., 35, 64.

[11] Id., 61-62.

[12] Id., 63.

[13] Id., 85.

[14] Id., 36, 64.

[15] Id., 40, 188, 191.

[16] Id., 88.

[17] Id., 37, 64.

[18] Id., 35-36.

[19] Id., 35-38.

[20] Id., 39-47

[21] Id., 66-69.

[22] SEC. 5. Pleading grounds as affirmative defenses. — Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

[23] SEC. 1 (e). That there is another action pending between the same parties for the same cause.

[24] Id., 92-93.

[25] Id., 16-24.

[26] Id., 102-103, 152-153.

[27] Id., 109.

[28] Section 1(e), Rule 16 of the Rules of Court; *Marapao vs. Mendoza*, 61468, December 8, 1982, 119 SCRA 97; *Del Rosario, et al. vs. Jacinto, et al.*, No. L-20340, September 10, 1965, 15 SCRA 15; *Alarcon vs. Torres, et al.*, No. L-21656, March 31, 1957, and other cases.

[29] *Peñalosa v. Tuason*, 22 Phil. 303; *Lasala v. Sernate*, 110 Phil. 255; and *Velasco v.*, 112 Phil. 631.

[30] *Rollo*, 80.

[31] Id., 92-93.

[32] Id., 94.

[33] Id., 92.

[34] 98 Phil. 1003, L-8767, March 23, 1956.

[35] *Napocor vs. De Veyra*, L-15763, December 22, 1961, 3 SCRA 646.

[36] *Calo v. Roldan*, 76 Phil. 445.

[37] *Rollo*, 54, 58.

[38] E. Razon, Inc., et al. vs. Phil. Ports Authority, et al., G.R. No. 75197, June 22, 1987.

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