

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
INTERMEDIATE APPELLATE COURT, AND ANGEL L. BAUTISTA,
RESPONDENTS.***G.R. No. 73027. October 18, 1990*

Ponente: NARVASA, J.

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An analysis of the private respondent's claims discloses their utter lack of support from the facts on record; yet he has somehow succeeded in delaying the just denouement of his specious demands and even in persuading the Intermediate Appellate Court to grant him a remedy to which he was clearly not entitled. Relief to the petitioner is clearly indicated.

In their lifetime, the spouses Pedro and Matilde Lim were the owners in fee simple of two parcels of land covered by OCT No. RP-3 and TCT No. T-522 of the Registry of Deeds for Iligan City. These lots they mortgaged to the Development Bank of the Philippines (DBP) under deeds dated December 15, 1961 and January 16, 1963.[1] The mortgage contracts contained a stipulation requiring consent of the DBP to any transfer of the property.

On July 23, 1968, the Lims sold the lots to the Spouses Miguel and Escolastica Paguio, who assumed the mortgage obligation burdening the property in favor of the DBP.[2] Approval of the transaction having been subsequently given by the DBP,[3] the Paguios obtained titles to the property in their names, TCT Nos. 7844 and 7845. Annotated on the titles was the mortgage of the DBP, inclusive of the explicit requirement, already mentioned, that any transfer of the mortgaged property required the consent of the DBP.

Because the Paguios failed to pay the balance of the price to the Lims, the latter sued them for the recovery thereof in the Court of First Instance of Lanao del Norte.[4] The suit ended in a compromise agreement which was approved by the Court and embodied in its judgment.[5] The judgment enjoined the parties to comply with their compromise agreement in good faith, "subject * * to the liens which the Development Bank of the Philippines may have in the properties in question." [6] In virtue thereof the Paguios, by deed dated January 18, 1973, reconveyed the two (2) lots to the Lims.[7]

Some three weeks afterwards, the Lims executed a "Deed of Sale with Assumption of Mortgage" dated February 6, 1973, conveying the same two (2) lots to Angel Bautista (private respondent herein).[8] Since the transaction did not count with the consent of DBP, what Bautista did was to send a letter on the same day to the Manager of the DBP Branch at Iligan City, Mr. Clodualdo Reyes, submitting the deed for consideration and approval, asking for an extension of at least 120 days to settle the Lims' mortgage indebtedness or negotiate for the restructuring thereof, and promising to pay the mortgage debt in full as soon as he received the price of a subdivision he was then selling.[9] On May 25, 1974, Bautista wrote another letter to the DBP, requesting that he be furnished with the statement of account of the late Pedro Lim, and undertaking to pay that account in full as soon as he received payment of the price of a subdivision he was selling in Caloocan City.[10] On May 30, 1974, Bautista once more communicated with the DBP. He declared that although more than a year had passed since he sent his letter of

February 6, 1973 to the DBP, he had "not received any answer from you or your staff." He added that if his request had been approved, he should be informed of the schedule of payments expected of him so "we can adjust our finances"; but that if the transaction had been disapproved, he was ready to pay in full the mortgage debt "which we have already assumed." [11]

On June 4, 1974, DBP Branch Manager Reyes sent Bautista a letter specifically in response to the latter's request for information about the statement of account of Pedro Lim, who had since died, and his (Bautista's) offer to assume and liquidate the same. Reyes stated that the Lims had not "officially assumed the mortgage of the spouses Miguel Paguio. Your privity with the DBP would be based on the contract with the Lims, which we in fact recommended but was not approved based on the credit findings of our Credit Department on your financial and credit standings." The Manager went on to say that the Lim account was already with the Bank's Legal Division for foreclosure, and the Bank could not accede to Bautista's request (for restructuring or payment) which it considered "without valid and legal basis under existing rules." [12]

As Manager Reyes had warned, foreclosure of the mortgage on the lots in question was extrajudicially effected on account of the Lims' failure to pay their indebtedness. At the foreclosure sale, conducted on July 31, 1974, the property was auctioned off to the DBP as the highest bidder. [13] Prior thereto, notices of the extrajudicial foreclosure sale, dated June 24, 1974, were served on the Spouses Lim and the Spouses Paguio. In addition, the same notices were posted, from June 25 to date of sale, in the old public market, at the Post Office Building, at the City Hall, and the CFI court-house, [14] and also published in the newspaper "Lanao Mail," in its issues of July 1, 8, and 15, 1974. [15]

After the lapse of more than a year, with neither the Lims nor the Paguios coming forth to redeem the foreclosed property, the DBP consolidated its ownership over the lots. This it did on December 12, 1975. As a result, TCT Nos. 7844 and 7845 were cancelled, and new ones issued to DBP, numbered 13329 and 13330. [16]

As for Bautista, from the time that he received Manager Reyes' letter of June 4, 1974, and for a period of more than five (5) years thereafter, he did nothing towards vindicating any claim to the property.

Bautista was next heard from after a company named Legaspi Allied Ventures Co., hereafter simply LAVCO, offered on August 29, 1979 to buy the two parcels of land from DBP and deposited P280,000.00 with it as earnest money. [17] Having apparently gotten wind of the transaction, Bautista filed on October 17, 1979 a complaint with the Court of first Instance of Lanao del Norte against the DBP, the Provincial Sheriff of Lanao del Norte and the Register of Deeds for "annulment of extra-judicial foreclosure of mortgage, certificate of sale, consolidation of ownership, damages, with prayer for preliminary injunction." [18]

On November 7, 1979, DBP executed in LAVCO's favor a Deed of Conditional Sale of the two parcels of land, including the buildings thereon and the chattels therein. [19] The price set was P1,400,000.00 of which P280,000.00 had been earlier deposited with the DBP, as already mentioned. [20]

Bautista's complaint was eventually dismissed by the Trial Court by Order dated June 11, 1982, after a preliminary hearing at DBP's instance on the affirmative defenses set out in its Answer, and after submission of evidence and relevant pleadings by the parties. [21] The Court found that:

(1) as regards the alleged sale by the Lim Spouses to Bautista, the transaction on which the latter relies for his claims to the property, "there was no actual consideration given by Angel L. Bautista to the said spouses," hence the sale was void as being "absolutely simulated or fictitious;" [22]

(2) there was no written consent given by the DBP to that sale by the Lims to Bautista, in violation of "pacto de non alienando" in the mortgage contracts, i.e., that the "mortgagor shall not sell, dispose of, mortgage, nor in any

manner encumber the mortgaged property, without the written consent of the Mortgagee;"

(3) the extrajudicial foreclosure "proceedings and the certificate of sale were effected with all the formalities, in consonance with the requirements of the law;" and

(4) Bautista was definitely aware of the mortgages in favor of the DBP, and of the scheduled foreclosure sale but did not take part in the bidding or otherwise attempt to settle the mortgage obligation.[23]

The Trial Court accordingly ruled that Bautista's action had "no leg to stand on," and he had "miserably failed to establish his legal right of ownership over the mortgaged properties;" that, in other words, he had "no cause of action and, therefore, ** DBP's motion to dismiss ** (the) complaint should be ** GRANTED."

Bautista's motion for reconsideration of the dismissal of his complaint was denied by Order dated October 7, 1982.

While the action was going on, and presumably in the expectation that it might end in an amicable settlement, National Steel Corporation (hereafter simply NSC) somehow came to negotiate with Bautista for the purchase of the lots. Bautista and NSC came to an agreement in consideration of the price of P1,520,659.20, conditioned upon an amicable settlement being reached in said pending action. On this basis, Bautista filed a motion with the Court asking that NSC be granted authority to deposit the price with the DBP, to await final disposition of the case. The DBP manifested that it had no objection to such a deposit being made with it, but emphasized that its consent thereto was not an admission of any right on the part of Bautista in the lots.

NSC also negotiated, and ultimately entered into a contract with LAVCO for the purchase of one of the latter's lots, that covered by TCT No. 13330.[24] It paid the stipulated price to LAVCO from which, in turn, LAVCO paid to DBP the sum of P1,059,307.82 in connection with their Deed of Conditional Sale of November 7, 1979.[25] LAVCO thereafter took possession of the property, and its right of possession was subsequently upheld by the Court of Agrarian Relations in a decision rendered on September 2, 1981 in a case brought by a tenant against LAVCO (CAR Case No. 117 [Iligan City], "Jose Campong v. Legaspi Allied Ventures [LAVCO]").[26]

On November 21, 1982 Bautista appealed to the Intermediate Appellate Court from the Trial Court's above mentioned Order of June 11, 1982 (dismissing his complaint).[27] The appeal was docketed as AC-G.R. CV No. 2497-UDK.[28]

On March 23, 1983, the Trial Court granted the motion for intervention as defendants of LAVCO and its managing partner, Bonifacio Legaspi;[29] and on July 25, 1983, the Court granted said intervenors' motion to implead NSC as defendant. NSC filed a motion dated August 16, 1983 seeking dismissal of the claim asserted against it and for other relief, but this was denied, by Order dated December 2, 1983. Ten days later, however, the Court reversed itself. It issued an Order not only dismissing the case against NSC, but decreeing the delivery to it by DBP of the lot covered by TCT No. 13330, as well as the cancellation of said title and the issuance of a new one in the name of NSC. This was followed the following day, December 13, 1983, by another Order directing the withdrawal of the deposit of P2 million at the Philippine National Bank and its transfer to the DBP and LAVCO and Legaspi.[30]

On February 22, 1984, Bautista filed a motion with the Intermediate Appellate Court to declare void all orders of the Trial Court subsequent to the perfection of his appeal therefrom;[31] and on August 28, 1984, a "Motion to Deposit the Proceeds and/or Income of the Properties Subject Matter of this Case." [32]

By resolution dated October 4, 1984, the Intermediate Appellate Court declared void all said orders of the Trial Court issued after perfection of Bautista's appeal from the Order of dismissal of June 11, 1984.[33]

By another resolution dated January 14, 1985, the Intermediate Appellate Court ordered "DBP and any or all persons or entities claiming under them (DBP) ** to deposit to this Court all monies, incomes, harvest or proceeds of the properties subject matter of the case and covered by TCT Nos. T-7844 (a.f.) and T-7845 (a.f.)."[34] The Appellate Court thereafter denied, by resolution dated March 2, 1985:

- 1) DBP's motion for reconsideration of the aforesaid resolutions of October 4, 1984 and January 14, 1985,[35] and
- 2) "the prayer of Legaspi Allied Ventures Company and Bonifacio P. Legaspi in their motion dated February 12, 1985 that they be allowed to intervene in this appeal."[36]

Another Resolution of the same Court, dated May 10, 1985, required DBP "to comply with the ** resolution promulgated on January 14, 1985 ordering said bank to deposit to this Court all monies, income, etc. of the property in question."

On May 27, 1985, Bautista presented a "Manifestation" in relation to the Resolution of January 14, 1985 (requiring deposit of "all monies ** or proceeds of the properties subject matter of this case").[37] The manifestation's avowed purpose was "to help ** (the Court of Appeals) in arriving at the proper amounts or incomes to be deposited to this Honorable court by defendant DBP and all persons or entities claiming right under them (DBP) particularly Legaspi Allied Ventures company and Bonifacio Legaspi." It specified what Bautista evidently believed were the amounts that should be so deposited, including the down payment of P280,000.00 made by LAVCO to DBP, the proceeds of the extrajudicial foreclosure sale of December 13, 1983 in the sum of P1,059,307.82, other amounts received by LAVCO as share in the harvest received from "tenant-overseer" Jose Campong, and "rice milling and warehousing (fees) from the rice mill of the properties subject of the case," etc. The Intermediate Appellate Court required DBP to comment; the latter moved for an extension of time to comply since it had not been furnished a copy of Bautista's manifestation; DBP was finally given a copy of the manifestation on July 11, 1985, after which it submitted its comment.[38]

In its comment dated July 29, 1985, DBP disputed Bautista's averments.[39] It pointed out, among other things, that Bautista's claim to the property in question was "anchored on an alleged deed of sale with assumption of mortgage in favor of appellee DBP," but since Bautista "never paid the loans secured by such mortgages" the same were foreclosed, and he had done nothing for some six (6) years thereafter to pay those obligations; that the proceeds of the foreclosure sale, and all income thereafter derived from the property rightfully pertained to DBP and its successor-in-interest.

It was "on account of the above-mentioned resolutions ** of the respondent Appellate Court," to wit:

- 1) of January 14, 1985, ordering "defendant DBP and any or all persons or entities claiming under them (DBP) to deposit ** all monies, incomes, harvest or proceeds of the properties subject matter of this case covered by TCT Nos. T-7844 (a.f.) and 7845 (a.f.),"
- 2) of March 27, 1985, "denying the petitioner's 'Motion for Reconsideration' without citing the facts and legal grounds on which such denial was anchored," and
- 3) of May 10, 1985, requiring DBP to comply with the resolution of January 14, 1985,

which resolutions, according to petitioner DBP, "may soon be implemented," that it "commenced the present petition" in this Court.

The recourse to this Court by petitioner DBP might in a sense be deemed somewhat precipitate; but this aspect of the case may be disregarded as of no real significance since the merit of its cause otherwise appears plain and

patent upon the record, and its consequent entitlement to relief clear and of no little urgency.

It should have been evident to the Intermediate Appellate Court, in light of the material facts before it, and now before this Court, that Bautista had absolutely no right over the property in question. For the record indisputably shows that -

- 1) as Bautista was well aware, the effectivity of the sale of the property to him by the Lim Spouses on February 6, 1973 was conditioned on the approval thereof by the DBP, the holder of a mortgage thereon;
- 2) Bautista failed to obtain DBP's consent to the sale; in fact, he was advised that his request for approval thereof had been denied based on the unsatisfactory state of his "financial and credit standings;"
- 3) the mortgage on the property was thereafter extrajudicially foreclosed on account of the mortgagor's (the Lims') failure to pay the mortgage debt;
- 4) at no time before or after the foreclosure did Bautista offer to pay the mortgage obligation; indeed, the one-year period for redemption expired without his being heard from at all;
- 5) then, too, for a period of five (5) years or so after the foreclosure sale and the consolidation of title in favor of the highest bidder, the DBP, Bautista made no effort whatever towards prosecuting his alleged claim to the property;
- 6) no act of recognition, or generation, of any right in Bautista's favor over the property was ever executed by DBP or the latter's subsequent transferees; the agreement between Bautista and the National Steel Corporation, which at the time did not itself have any right over the property -- and which was subject to any contingent amicable settlement, which however never materialized -- was quite obviously, totally ineffectual to invest Bautista with any right over said property.

There was thus no justification whatsoever for the Intermediate Appellate Court to order -- on Bautista's motion and for his benefit -- "DBP and any or all persons or entities claiming under them (DBP) ** to deposit ** (with it) all monies, incomes, harvest or proceeds of the properties subject matter of the case and covered by TCT Nos. T-7844 (a.f.) and T-7845 (a.f.)." In doing so, that Court acted whimsically, capriciously, oppressively and despotically. It made dispositions with grave abuse of discretion amounting to lack of jurisdiction, causing serious injury to the parties whose rights over the property in question are as clear and unquestionable on the record as Bautista's lack thereof.

These conclusions having been reached, this case should ordinarily end in this Court simply with the nullification of the challenged resolutions of the respondent Court and the remand of the case to the latter for resolution of the appeal taken to it by Bautista. It appears, however, that all the material facts necessary for a determination on the merits of that appeal, have already been laid before, and duly reviewed and assessed by, this Court. The Court perceives no cogent reason why the case may not now be adjudicated on its merits in this Court, conformably with the conclusions just mentioned. Under the circumstances, a remand of the case to the respondent Court would be unnecessary, and result merely in undue deferment of the final disposition of the controversy, already long delayed.

One other factor additionally demonstrates the correctness of the course of action just indicated, and that is, the fact that Bautista has indulged in "forum shopping."

In DBP's "Opposition to Manifestation and Motion" dated May 9, 1989, it asserted that after Bautista had appealed to the Court of Appeals from the adverse judgment rendered by the Court of First Instance of Iligan City in Civil Case No. 1282-79 (II-660), he filed on January 8, 1983, "another case with the Makati Regional Trial

Court, this time denominated as Specific Performance but alleging the same things as his complaint in the case filed with then CFI Iligan City Branch II FROM WHENCE THIS PETITION FOR CERTIORARI ORIGINATES.”[40]

To this pleading of DBP, Bautista filed on July 1, 1989 an undated reply. In it, Bautista did not deny that he did file the second action; on the contrary, he tacitly admitted having done so but averred that that act of his did not constitute forum shopping.[41] This is what he says:

"No forum-shopping

The interim rules of court provides (sic):

'SEC.17. Petitions for writs of certiorari, etc., - No petition for certiorari, mandamus, prohibition, habeas corpus or quo warranto may be filed in the Intermediate Appellate Court if another similar petition has been filed or is still pending in the Supreme Court. Nor may such petition be filed (in the Supreme Court if a similar petition has been filed) or is still pending in the Intermediate Appellate Court (unless it be to review the action taken by the Intermediate Appellate Court) on the petition (filed) with it. A violation of this rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned.'

We take exception to the wild view of petitioner that the acts of private respondent falls (sic) under the aforementioned provisions of the law and existing jurisprudence."

But "existing jurisprudence" does not justify characterizing petitioner's view as "wild," as Bautista does; it does not limit forum shopping to actions or proceedings in the same court, as he seems to think. Indeed, in line with the principle adverted to by Bautista himself, case law sustains the power of the Courts to condemn and sanction the institution of an action or proceeding raising (otherwise than by due appeal) the same basic issues as another still pending, or already disposed of by the same or another court, by a party in both actions or proceedings, regardless of the courts involved, that act being deemed contumacious as an abuse of the processes of the Court, and as professional misconduct on the part of a lawyer.

In *Pacquing v. CA*, 115 SCRA 117, 123 (1982) the Court declared litigants deserving of reprimand "who frustrate the speedy administration of justice by resorting to all available means to get from one court what is denied them by another, ** as well as their counsel who assist in such undesirable conduct in grave violation of the lawyer's oath of office." Similarly, in *Vda. de Guanzon v. Yrad, Jr.*, 133 SCRA 727-731 (1984), the penalty of severe censure was imposed for the contumacious act of a lawyer in filing a petition in the Court of Appeals thirty days after filing a similar petition in this Court. In *Minister of Natural Resources v. Heirs of Orval Hughes, et al.*, 155 SCRA 566 (1987), it was ruled that the parties' "resort to forum shopping, to the filing of repetitious suits in different courts not only furnishes ground for giving their present action short shrift, but also lays the foundation for an inquiry into their liability for constructive contempt for having abused the processes of the courts, and their counsel's own liability for the same sanction and such other additional administrative responsibility as might be proper in the premises.[42]

WHEREFORE, judgment is rendered --

- 1) NULLIFYING AND SETTING ASIDE the Resolutions of the respondent Court dated January 14, 1985, March 27, 1985 and May 10, 1985 in AC-G.R. CV No. 2497 UDK;
- 2) ORDERING THE DISMISSAL of said AC-G.R. CV No. 2497 as well as the case for specific performance involving the same matters filed by respondent Bautista on January 8, 1983 in the Makati Regional Trial Court; and

3) AFFIRMING AND DECLARING FINAL the ORDER dated June 11, 1982 in Civil Case No. II-660 of Branch II of the then Court of First Instance of Lanao del Norte, Hon. Buenaventura S. Baccay, presiding; and

4) ORDERING private respondent Angel L. Bautista and his counsel, Atty. Emilio G. Abrogena, to show cause within ten (10) days from notice, why the sanction of contempt or administrative disciplinary penalty, as the case may be, should not be imposed on them for having engaged in forum-shopping.

SO ORDERED.

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

[1] Rollo, pp. 3, 45

[2] The Paguios executed a "Deed of Assumption of Mortgage" dated July 9, 1969.

[3] Rollo, p. 46: Board Resolution No. 6995, Sept. 6, 1968, amended June 3, 1969

[4] Id., p. 46. The suit was docketed as Civil Case No. II-223 (1757)

[5] Id., pp. 4, 46

[6] Id., p. 4

[7] Id.

[8] Id., pp. 4, 46-47

[9] Id., p. 47

[10] Id., p. 81

[11] Id., p. 82

[12] Id., p. 83

[13] Id., pp. 4, 47

[14] Id., p. 90

[15] Id., pp. 92-93

[16] Id., p. 4

[17] Id., p. 5

[18] Docketed as Civil Case No. II-660: SEE footnote 4 (p. 2), supra, regarding a first action, Civil Case No. II-223 (1757). In Civil Case II-660, DBP filed an answer with affirmative defenses on November 7, 1979; Bautista presented an opposition to the affirmative defenses; DBP filed a "rejoinder;" and Bautista submitted a "reply."

[19] Rollo, pp. 128-132

[20] See footnote 16, supra

[21] Sec. 5, Rule 16, Rules of Court

[22] ART. 1409, Civil Code, cited by the Trial Judge in relation to ART. 1318 and ART. 1352 of the same Code

[23] Rollo, pp. 5,103-127

[24] Rollo, pp. 34, 38, 66

[25] Id., p. 34.

[26] Id., p. 22

[27] Id., pp. 5, 48

[28] Id., pp. 19, 27

[29] Id., p. 49

[30] Id., pp. 48-49

[31] Id., p. 49

[32] Id., pp. 5-6

[33] Id., p. 49

[34] Id., pp. 5, 19. The resolution, and that of May 10, 1985, were written for the 4th Civil Cases Division by Sison, PV., J., with whom concurred Bidin and Veloso, JJ.

[35] Id., pp. 27-28, 50

[36] Id., pp. 6-7, 29, 50

[37] Id., pp. 7, 31-32

[38] Id., p. 7

[39] Id., pp. 7, 33-36

[40] Id., pp. 149,154-155

[41] Id., pp. 163,166

[42] Citing Resolution of the Court En Banc dated January 11, 1983 (par. 17); Pacquing v. C.A., et al., 115 SCRA 117, supra; Buan v. Lopez, 145 SCRA 34; E. Razon, Inc. et al. v. Philippine Ports Authority, et al., G.R. No. 75197: Resolution of the Court en banc, July 31, 1986; Palm Avenue Realty Development Corporation, et al. v. PCGG, et al., G.R. No. 76296, August 31,1987, 153 SCRA, 579; SEE also, Limpin v. IAC, 161 SCRA 83; and Villa v. Lazaro, etc., et al, G.R. No. 69871, Aug. 24, 1990.

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