

ASSET PRIVATIZATION TRUST, PETITIONER, VS. COURT OF APPEALS, HON. JESUS F. GUERRERO, JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 148, STA. INES MELALE FOREST PRODUCTS CO...*G.R. No. 81024. February 03, 2000*

Ponente: PURISIMA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-81024/>**PURISIMA, J.:**

May the proscription against multiplicity of suits be properly invoked to allow the filing of a supplemental complaint involving basically the same parties as those in the original complaint but with a cause of action arising from a transaction distinct from that sued upon in the original complaint? This is the issue posed in the present petition for review on certiorari of the Decision of the Court of Appeals.

At the outset, it should be clarified that the Development Bank of the Philippines (DBP), not the Asset Privatization Trust (APT), was the original petitioner in the case. APT was first impleaded as a party-respondent in the Resolution of August 14, 1989[1] on account of the fact that respondent Sta. Ines Melale Forest Products Corporation (SIM) "has been taken over" by the APT. However, in its reply to the manifestation and comment of APT, the DBP asserted that the transfer of SIM's rights and interests to the APT cannot be a valid ground for the dismissal of the petition because the said transfer was effected *pendente lite*. The case could prosper only if the Court would direct "APT, as transferee (of SIM's interests), to be substituted in the action or joined with petitioner" in accordance with Sec. 20, Rule 3 of the Rules of Court.[2] Thus, pursuant to the said rule, in the Resolution of March 26, 1990,[3] the Court ordered that the DBP "be substituted" as party-petitioner in this case by APT.[4]

The petition originated from a transaction between the DBP and Galleon Shipping Corporation sometime in 1979. Galleon obtained several "foreign loan guarantee accommodations" from DBP in the total amount of US\$87.233 Million for the acquisition of five (5) brand-new vessels and to finance twenty percent (20%) of the acquisition cost of two (2) second-hand vessels. To secure payment thereof, Galleon mortgaged the vessels to DBP. Named joint and solidary debtors with Galleon in such transaction were SIM, Rodolfo M. Cuenca and Manuel I. Tinio. Due to Galleon's default in the payment of its obligations, DBP had to "make good its guarantees to Galleon's foreign creditors." In June 1984, DBP foreclosed the mortgage but the proceeds of the auction sales conducted after the extrajudicial foreclosure of the mortgage on the vessels, yielded a deficiency in the amount of P2,700,960,412.60.[5]

Apparently in anticipation of DBP's claim for the said deficiency, private respondents SIM, Cuenca and Tinio lodged a complaint against DBP, National Development Corporation (NDC) and Galleon (which had become the National Galleon Shipping Corporation ([NGSC]) before Branch 148 of the Regional Trial Court of Makati, alleging that under Letter of Instruction No. 1155, dated July 21, 1981, the then President of the Philippines directed NDC to take over the ownership and operation of Galleon. In compliance with such directive, on August

10, 1981 Galleon, represented Cuenca, entered into a Memorandum of Agreement with NDC whereby the latter acquired 100% of Galleon's equity. However, without paying a single centavo in accordance with the "share purchase agreement," NDC took over absolute ownership of Galleon but mismanaged its operations and placed obstacles to the formal signing of the "share purchase agreement". It is alleged that it was during the management of NDC that Galleon incurred the aforesaid indebtedness with the accommodation of DBP.

The Complaint prayed for the issuance of a temporary restraining order directing the defendants "to cease and desist from filing or pursuing any action or claim for deficiency judgment or enforcing further claim of any nature against the plaintiffs or any of them whether connected or not with the transaction herein, whether the action be judicial or extrajudicial foreclosure, until the rights of the parties shall have been declared under L.O.I. 1155, the Memorandum Agreement, and other supporting documents, and contemporaneous actions of the parties." They also prayed that the injunction that the court would grant be made permanent; that they be declared as "no longer liable to the defendants under the Deed of Undertaking, pledge, mortgages, and other accessory contracts between the parties;" that the contracts be declared as having been extinguished and the plaintiffs released from any and all responsibilities therefor, and that the NDC be declared the absolute owner of Galleon "even without the execution of a share purchase agreement and responsible for any and all obligations of said Galleon and the plaintiffs, if any prior to the transfer of ownership, management and control of defendant NDC." They further prayed that NDC and Galleon be made to pay them their "advances" on behalf of Galleon in the total amount of P15.15 million plus \$2.3 million, the price of their equity in Galleon and damages.[6]

In its answer to the complaint, DBP theorized that the liability of the plaintiffs therein for Galleon's obligation was not extinguished because L.O.I. 1155, which was not implemented, was in fact revoked by L.O.I. 1195 dated February 19, 1982. Galleon's ownership was not transferred to NDC because Galleon and NDC did not proceed with the formality of entering into the "share purchase agreement" which was supposed to effect the conveyance as stipulated in the Memorandum of Agreement. The DBP stated further that it was enforcing its claim against the plaintiffs upon a deed of undertaking they had signed and not upon the deed of mortgage. By way of counterclaim, the DBP reiterated its deficiency claim against the plaintiffs in the amount of P2,700,960,412.60.[7]

On May 15, 1985, the trial court issued a writ of preliminary injunction ordering the DBP and its co-defendants to "refrain from pursuing any other deficiency claims or any other claim of any nature, whether judicial or extra-judicial, arising out of, bred by or incident to the transactions covered by the complaint except as counterclaims in this proceedings." [8]

Meanwhile, the DBP granted SIM, Cuenca and Tinio foreign loan guarantee accommodations in the total amount of P238,526,225.68, as of August 31, 1985. The transactions were secured by a mortgage over certain parcels of land owned by SIM in Magallanes, Agusan del Sur.[9] The mortgage contract authorized DBP to take actual possession of the mortgaged property upon breach of any of the conditions therein stipulated.[10] Thus, when the mortgagor failed to pay their amortizations on time, the DBP took the initial step to foreclose the mortgage by taking possession of the mortgaged plant site in Magallanes, Agusan del Sur. It posted forty-five (45) security guards with instructions to prevent the taking out therefrom of property or equipment without DBP's approval.[11]

SIM took DBP's action as a "retaliatory move." [12] It sought to supplement the original complaint in Civil Case No. 10378 by filing a "Motion to Admit Supplemental Complaint." [13] It alleged that DBP's taking possession of the said plant was a "new development" between the parties and in violation of the writ of preliminary injunction issued and therefore, warranted the admission of the supplemental complaint pursuant to Section 6, Rule 10 of the Rules of Court.

The supplemental complaint dated June 13, 1985 sought a declaration that "the defendant DBP is not entitled to foreclose the mortgage" and that DBP's act of posting its security guards in the Agusan del Sur plant is null and void and unlawful. The same pleading, the first sentence of which stated that it was filed by SIM only, alleged that the presence of DBP's security men at the manufacturing and logging plant site caused SIM's creditors, suppliers and workers to panic. SIM also claimed that the foreclosure of mortgage would "paralyze" its "business operation" thereby rendering jobless 2,300 employees. It then, prayed that judgment be rendered "making the injunction permanent" and that petitioner be adjudged liable to SIM for damages.[14]

Immediately, or on June 14, 1985, to be precise, the trial court issued an order directing DBP and all persons acting under it "to refrain from interfering with the possession, operation, management and administration" of SIM's plant at Agusan del Norte, "as well as its other mortgaged properties, until plaintiffs' motion could be heard on June 21, 1985." In the same order the court directed DBP to file its comment on or opposition to plaintiffs' motion to admit supplemental complaint.[15]

The DBP opposed the admission of the supplemental complaint; alleging primarily "that the subject matter of the supplemental complaint is not a proper subject to be heard in the instant case." [16] Explaining that it "merely exercised its power as attorney-in fact" under the mortgage contract, the DBP argued that the supplemental complaint "introduces another cause of action into this case". It added that the cause of action in the original complaint could not be joined with that alleged in the supplemental complaint "pursuant to the provisions of Sec. 5 of Rule 2 of the Rules of Court." [17]

On August 20, 1985, the trial court issued an Order admitting the supplemental complaint; [18] stating thus;

"Considering that the Supreme Court of the Philippines has implicitly recognized the propriety of admitting a supplemental pleading although the causes therein mentioned are not in any way relevant and material to the action originally pleaded as a means of serving 'the ends of a speedy administration of justice or a prompt dispatch of cases' (De la Rama Steamship Co., Inc. v. National Development Co., 6 SCRA 775, 781); that the provisions of the Rules on joinder of causes of action should be liberally construed to avoid multiplicity of suits and to expedite the disposition of litigation at minimum cost (Francisco on Rules of Court, 1973 Ed., Vol. I, p. 186, citing cases & authorities); that the Supreme Court has likewise recognized an exception to the general rule that it is a prerequisite to the joinder of causes of action that all the causes must affect all the parties to the action (Sapalico vs. Calpe, et. al., 41 Phil 850, cited in Francisco, supra, p. 187); that cognizance of the cause pleaded in plaintiffs' supplemental pleading will not by itself cause prejudice to the other parties inasmuch as certain specific procedural measures in the course of the proceedings could be adopted and imposed by the Court to obviate not only inconvenience on the part of the parties but more importantly confusion of the material issues in controversy; and that the filing of the supplemental pleading with this Court is not violative of the rules on venue considering that the subject of the action refers essentially to the propriety of the right of defendant Development Bank of the Philippines to foreclose and the legality of certain acts done or about to be perpetrated by the said defendants anterior to and as incidents of the exercise of such right to foreclose, and not the actual foreclosure of the mortgaged properties located in Mindanao;

This Court finds no cogent grounds to deny the admission of plaintiffs' Supplemental Complaint.

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The DBP questioned the said Order before the Court of Appeals via a petition for certiorari dated November 19, 1985.[19]

On February 18, 1987, the Court of Appeals[20] declared the assailed Order as null and void, dismissed the supplemental complaint and lifted the preliminary injunction issued by the trial court. It held that the trial court gravely abused its discretion in issuing subject Order for two reasons: First, the admission of the supplemental

complaint violated the rule on venue, specifically Sec. 2 (a), Rule 4 of the Rules of Court. The supplemental complaint was filed when DBP had already initiated foreclosure proceedings and therefore while the supplemental complaint appeared to be a personal action, in reality it was a real action seeking "a ruling on the legality of (DBP's) foreclosure action." Citing *Lizares v. Caluag*,^[21] the Court of Appeals held that venue was improperly laid. Second, a supplemental complaint should strengthen or reinforce the cause of action or defense in the original complaint for it is meant to "supply deficiencies in aid of one original pleading, not to entirely substitute the latter." The supplemental complaint, however, has a subject matter "distinct and different from each other." The cause of action in the original complaint arose from the mortgage contract executed by Galleon while that in the supplemental complaint arose from the mortgage contract "executed by principal obligors (firm)."

The Court of Appeals also held that the trial court gravely abused its discretion in directing the parties "to maintain the status quo ante litem" as it would restrain the DBP from exercising its right to foreclose the mortgage in accordance with P.D. No. 385. Section 2 of said decree specifically enjoins courts from issuing permanent injunctions against any government financial institution that seeks foreclosure of mortgage unless after hearing it is proven that after the filing of the foreclosure proceedings, the borrower had paid twenty percent (20%) of the outstanding arrearages. The status quo order also violated Sec. 5, Rule 58 of the Rules of Court, as amended by B.P. Blg. 224, limiting the period of a restraining order to only twenty (20) days from the date of its issuance, as well as Circular No. 13 dated May 17, 1984 of this Court enjoining Justices and Judges to observe strictly said provisions of law.^[22]

However, upon motion for reconsideration, the Court of Appeals reversed its aforesaid Decision. In its Resolution dated August 25, 1987, the appellate court said:

"There is a difference between an action for foreclosure of mortgage, and an action to stop the foreclosure of said mortgage, because the former is a real action and, therefore, venue is governed by Section 2-(a) of Rule 4 of the Rules of Court; while the latter is definitely a personal action which is governed by Section 2-(b) of said rule.

A personal action is one for the recovery of personal property, the enforcement of a contract or damages for its breach, or for damages for injury to person or property (1 C.J.S. 948). In a real action, the plaintiff seeks the recovery of real property, or, as indicated in Section 2(a) of Rule 4, it is an action affecting title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of a mortgage on, real property (*Hernandez vs. Rural Bank of Lucena, Inc.*, 81 SCRA 75, 84).

The case of *Lizares, Inc. v. Caluag* (4 SCRA 746) cited by petitioner in support of its claim that venue was improperly laid is clearly not applicable since said case involves 'Cacnio's title to the real property adverted to' and involved his retention of possession of said property, while in the case at bar, there is no dispute as to the title of the properties therein. What is in issue is the right of petitioner to foreclose, and this involves a personal action.

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At any rate, the original and amended complaint filed by private respondent Sta. Ines (SIM) against petitioner with the Regional Trial Court of Makati, Branch 148, in Civil Case No. 10387, with prayer for the issuance of a writ of preliminary injunction has for its purpose to declare private respondents not liable as co-makers to petitioner in view of LOI No. 1155, and to defeat petitioner's right to sue respondents for a deficiency claim. On May 15, 1985, said Court acting on the petition for the issuance of a writ preliminary injunction, issued said writ restraining petitioner -

'xxx from pursuing any other deficiency claims or any other claim of any nature, whether judicial or extrajudicial, arising out of, bred by or incident to the transaction covered by the complaint, except on

counterclaim.'

In spite of said injunction, on June 3, 1985 petitioner posted guards at the Magallanes Plant of private respondent SIM to immobilize private respondent, thereby causing panic on the suppliers of SIM. The need, therefore, for a declaration that the petitioner could not yet foreclose on the mortgage and for an imposition of damages, necessitated the filing on June 13, 1985 of a Motion to Admit Supplemental Complaint with application for issuance of restraining order or preliminary injunction. Private respondent SIM questioned the right of petitioner to take possession of its mortgaged properties and assets and to foreclose the same. On June 14, 1985, the respondent Judge issued a restraining order directing petitioner. (sic)

'xxx to refrain from interfering with the possession, management and administration of respondents' mortgaged assets.'

xxx xxx xxx."[23]

On the alleged error of the court a quo in directing the parties to maintain the status quo ante litem, the Court of Appeals agreed with therein private respondents that in raising the issue of equity, the DBP did so with "dirty hands" because it had invoked the jurisdiction of the trial court to stop SIM from moving out any item from the plant site and it had agreed with private respondents in open court that the status quo ante litem should be maintained. The Court of Appeals considered as an "important issue" the fact that the DBP had ceased to be the real party-in-interest by the transfer of SIM's account to the APT. It noted the PCGG's letter to the DBP emphasizing that it was necessary to keep SIM operational because as "a surrendered asset with millions worth of valuable equipment," a foreclosure would mean its closure, the loss of jobs and the eventual destruction of equipment by vandals. The Court of Appeals added that the PCGG cannot allow the foreclosure of SIM because of its policy that foreclosure is allowed only if "there is no pending litigation or controversy regarding either the asset or the loan transaction which may adversely affect the foreclosure of the sequestered asset."

The DBP presented a motion for the reconsideration of the Resolution of August 25, 1987 but on November 25, 1987, the Court of Appeals denied the same for lack of merit.

Undaunted, DBP has come to this Court via the instant petition for review on certiorari where petitioner DBP (now the APT) contends that:

THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING THE SUPPLEMENTAL COMPLAINT IT BEING VIOLATIVE OF THE -

A)

RULE ON VENUE OF REAL ACTION (Rule 4, Sec. 2-A, Revised Rules of Court)

B)

RULE ON JOINDER OF CAUSES OF ACTION (Rule 2, Sec. 5, Revised Rules of Court)

C)

RULE ON MATTERS SUBJECT OF SUPPLEMENTAL PLEADINGS (Rule 10, Sec. 6, Revised Rules of Court)

II

THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE LOWER COURT'S ISSUANCE OF A RESTRAINING ORDER/PRELIMINARY INJUNCTION WHICH IS CONTRARY TO LAW.

III

THE HONORABLE COURT OF APPEALS ERRED IN CONSIDERING THAT THE TRANSFER OF THE STA. INES MELALE ACCOUNT FROM DBP TO ASSETS PRIVATIZATION TRUST WARRANTS DISMISSAL OF THE PETITION

The petition is impressed with merit.

At the time the supplemental complaint was filed in Civil Case No. 10387, the pertinent provision of Rule 10 of the Rules of Court provided:

"Sec. 6. Matters subject of supplemental pleadings. - Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party should plead thereto, it shall so order, specifying the time therefor." [24]

Under the aforecited rule, a supplemental pleading is meant to supply deficiencies in aid of the original pleading and not to dispense with or substitute the latter. [25] It is not like an amended pleading which is a substitute for the original one. It does not supersede the original, but assumes that the original pleading is to stand. The issues joined under the original pleading remain as issues to be tried in the action. [26]

In *Leobrera v. Court of Appeals* [27] the Court ruled that when the cause of action stated in the supplemental complaint is different from the cause of action mentioned in the original complaint, the court should not admit the supplemental complaint. In that case, the Bank of the Philippine Islands (BPI) granted Carlos Leobrera an P800,000.00 credit facility that was secured by two (2) real estate mortgages. The credit facility was later converted into "a revolving promissory note line" the last of which was renewed on March 21, 1986 through two (2) ninety-day promissory notes. Upon maturity of the notes, Leobrera and BPI negotiated for renewal thereof but they failed to agree. Consequently, BPI demanded full payment of the 90-day loans. Because Leobrera failed to pay the loans, BPI prepared to foreclose the mortgages. However, before BPI could institute the foreclosure proceedings, Leobrera filed a complaint for damages with a prayer for the issuance of a writ of preliminary injunction to enjoin BPI from foreclosing the mortgages. The trial court issued the writ applied for.

It appeared, however, that apart from the P800,000.00 credit facility, BPI also granted Leobrera a three-year term loan of P500,000.00 secured by a real estate mortgage. After Leobrera had defaulted in his amortization payments, BPI called the entire loan due and demandable. Leobrera failed to pay but before BPI could foreclose the mortgage, Leobrera filed with the trial court a "Motion to File Supplemental Complaint" with the supplemental complaint attached thereto. The trial court granted Leobrera's motion but the Court of Appeals nullified that order of the trial court. Leobrera thus filed a petition for review on certiorari with this Court which, in due course, denied Leobrera's petition; this Court ratiocinating:

"As to the supplemental complaint, what likewise militates against its admission is the fact that the matters involved therein are entirely different from the causes of action mentioned in the original complaint.

A supplemental complaint should, as the name implies, supply only deficiencies in aid of an original complaint [*British Traders Insurance Company v. Commissioner of Internal Revenue*, G.R. No. L-20501, April 30, 1965, 13 SCRA 728]. It should contain only causes of action relevant and material to the plaintiff's right and which help or aid the plaintiff's right or defense [*De la Rama Steamship Co., Inc. v. National Development Company*, G.R. No. L-15659, November 30, 1962, 6 SCRA 775]. The supplemental complaint must be based on matters arising subsequent to the original complaint related to the claim or defense presented therein, and founded on the same cause of action. It cannot be used to try a new matter or a new cause of action [See

Randolph v. Missouri-Kansas-Texas R. Co., D.C. Mo. 1948, 78 F. Supp. 727, Berssenbrugge v. Luce Mfg. Co., D.C. Mo. 1939, 30 F. Supp. 101.]

While petitioner would persuade this Court that the causes of action are interrelated, the record reveals otherwise. The record shows that petitioner's main cause of action in the original complaint filed in Civil Case No. 15644 concerned BPI's threat to foreclose two real estate mortgages securing the two 90-day promissory notes executed by petitioner in 1986. Petitioner alleges that this threatened foreclosure violated the terms of the 1980 amicable settlement between BPI and petitioner.

The supplemental complaint on the other hand alleged facts of harassment committed by BPI in unreasonably opting to declare petitioner in default and in demanding full liquidation of the 1985 three-year term loan. This three-year term loan, as previously mentioned, was entirely distinct and separate from the two promissory notes. It was independent of the 1980 amicable settlement between petitioner and BPI which gave rise to the credit facility subject of the original complaint. Although there is identity in the remedies asked for in the original and supplemental complaints, i.e., injunction, petitioner's subsequent cause of action giving rise to the claim for damages in the supplemental complaint is unrelated to the amicable settlement which brought about the grant of the credit facilities, the breach of which settlement is alleged to be the basis of the original complaint. Petitioner himself in his supplemental complaint admits this. xxx.

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The two causes of action being entirely different, the latter one could not be successfully pleaded by supplemental complaint."[28]

The facts of the Leobrera cases are not very different from those in the case under scrutiny. However, private respondent SIM attempts to impress upon the Court that the facts alleged in the original complaint are connected with those in the supplemental complaint because the DBP's act of initiating foreclosure proceedings as regards the mortgaged plant in Agusan del Sur was in violation of the May 15, 1985 writ of preliminary injunction. Nevertheless, a closer look at the facts reveals that the original complaint was based on a cause of action that is entirely different from that stated in the supplemental complaint which arose out of a different set of facts.

A cause of action is the fact or combination of facts which affords a party a right to judicial interference in his behalf. It is the reason why the litigation has come about; it is the act or omission of defendant resulting in the violation of someone's right. Its existence is determined upon consideration of the statements or allegations in the complaint.[29]

In the original complaint in Civil Case No. 10387, what private respondents sought to prevent by their prayer for an injunction was the DBP's intention to go after private respondents for the deficiency of P2,700,960,412.60 resulting from the foreclosure of the mortgages in June 1984 of seven (7) vessels of Galleon. On the other hand, the cause of action stated in the supplemental complaint was the DBP's initial act of posing security guards in SIM's Agusan del Norte plant preparatory to the foreclosure of the mortgage of the same plant, allegedly in contravention of the writ of preliminary injunction issued by the trial court in Civil Case No. 10387. The supplemental complaint, however, states a fact that is entirely distinct from those in the original complaint. It alleges that the DBP's taking over the Agusan del Sur plant of SIM could not have been in pursuance of any agreement between SIM and the DBP because the mortgage dated November 8, 1984 that was entered into between those parties "does not provide extrajudicial and forcible taking over of the mortgaged properties by defendant DBP." [30] Although the thrust of the allegations in the supplemental complaint was to create a connection or relation between it and the original complaint, the same allegations reveal the fact that its filing was impelled by the imminence of the foreclosure of the November 8, 1984 mortgage, that is different from and outside of the subject matter of the original complaint.

Furthermore, if the supplemental complaint "assumes the original pleading to stand," then there was no pint in naming only the SIM as the plaintiff in the supplemental complaint. That fact only proves that the other plaintiffs in the original complaint, namely, Cuenca and Tinio, have no cause of action against the DBP in the supplemental complaint as it is in reality based on an entirely different subject matter.

Granting that SIM's purpose in filing the supplemental complaint was to effect a joinder of causes of action to avoid multiplicity of suits, it must fail just the same. The Rules of Court provide that causes of action may be joined provided that they arise out of the same contract, transaction or relation between the parties or are for demands for money or are of the same nature and character.[31] In *Republic v. Hernandez*,[32] the Court held:

"The statutory intent behind the provisions on joinder of causes of action is to encourage joinder of actions which could reasonably be said to involve kindred rights and wrongs, although the courts have not succeeded in giving a standard definition of the terms used or in developing a rule of universal application. The dominant idea is to permit joinder of causes of action, legal or equitable, where there is some substantial unity between them. While the rule allows a plaintiff to join as many separate claims as he may have, there should nevertheless be some unity in the problems presented and a common question of law and fact involved, subject always to the restriction thereon regarding jurisdiction, venue and joinder of parties. Unlimited joinder is not authorized."

In this case, hardly do the original and supplemental complaints meet the required test of "unity in the problem presented" and "a common question of law and fact involved" as regards jurisdiction, venue and joinder of parties. The ultimate problem in the original complaint as far as private respondents are concerned is how to prevent the DBP from pursuing the amount of deficiency after an extrajudicial foreclosure sale of the mortgaged vessels. In the supplemental complaint, what private respondent SIM seeks to preempt is the foreclosure of the mortgage of its Agusan del Sur plant.

As regards the issues of jurisdiction and venue, the original complaint clearly presents a personal action between the parties as it aims for a declaration of nonliability of private respondents under the contracts wherein they are solidarily liable with Galleon. A personal action is one brought for the recovery of personal property or for the enforcement of some contract or for the recovery of damages for its breach, or the recovery of damages for the commission of an injury to the person or property.[33] Hence, it was properly filed with the RTC of Makati in accordance with Sec. 2(b) of Rule 4 of the Rules of Court.[34]

On the other hand, the supplemental complaint is actually a real action as it was filed for the "specific recovery of land, tenements, or hereditaments." [35] Notably, private respondent SIM prays in the supplemental complaint that the DBP be declared as not entitled to foreclose the mortgage dated November 8, 1984 and that the DBP be ordered to restructure SIM's indebtedness. A declaration that the said mortgage should not be foreclosed involves a determination of the validity of the mortgage even though its subject matter, a real property, is located in Agusan del Sur and not in Makati. Although the supplemental complaint was so crafted that a cursory perusal thereof would create the impression that it is a personal action, the fact that is actually a real action, notwithstanding the claim for damages, may be gleaned from its prayer:

"WHEREFORE, it is most respectfully prayed that, after hearing on the merits, judgment be rendered:

- Making the injunction permanent;
- Declaring that the defendant DBP is not entitled to foreclose the mortgage under the Deed of Mortgage;
- Ordering defendant DBP to restructure the indebtedness of plaintiff SIM to defendant DBP;
- Sentencing the defendant DBP to pay to plaintiff SIM the following items of damages -

a)

actual and consequential damages of not less than P21M;

b)

moral damages of not less than P1M;

c)

exemplary damages of not less than P1M;

d)

25% of whatever may be recovered by plaintiff SIM from defendant DBP as attorney's fees;

e)

costs of suit;

- Granting to the plaintiff SIM such further and other reliefs to which it may be entitled in law and in equity."

Should the prayer for a permanent injunction be considered in connection with the writ of injunction that enjoined the DBP from "pursuing any other deficiency claims or any other claim of any nature, whether judicial or extrajudicial, arising out of, bred by or incident to the transactions covered by the complaint," then SIM's primordial aim in filing the supplemental complaint is to end DBP's continued possession of the Agusan del Sur plant. That would of course mean that the court had to deal with a transaction that is not "covered by the (original) complaint" as the November 8, 1984 mortgage is not alleged therein. Moreover, upon admission of the supplemental complaint, the Makati court would have to enforce the writ of injunction in Agusan del Sur.

As regards the prayer that the DBP be declared as "not entitled to foreclose" the November 8, 1984 mortgage that private respondent SIM admitted it had entered into with the DBP, it might as well be read as a prayer for the setting aside of the provisions of said mortgage, if not its nullification, in light of the following allegations in the supplemental complaint:

"VII

The only instrument signed by the plaintiff SIM in favor of the defendant DBP is a mortgage dated November 8, 1984, which does not provide extrajudicial and forcible taking over of the mortgaged properties by defendant DBP, a copy of which is hereto attached as Annex 'C' and made an integral part hereof;

VIII

The forcible and extrajudicial taking over possession of the Magallanes plant of the plaintiff SIM is null and void ab initio and unlawful, considering inter alia:

a)

There is no written contract, authorization, deed or instrument authorizing defendant DBP to extrajudicially possess and take over the said plant;

b)

The forcible taking over of the said plant by the defendant DBP constitutes a pactum commissorium for it amounts to an appropriation by defendant DBP of the mortgaged properties without any foreclosure thereof;

c)

The said extrajudicial taking over of possession also constitute a disobedience of the writ of preliminary injunction issued by this Honorable Court;

d)

Defendant DBP can not immediately take over possession without any writ of possession being issued by any court under Act 3135, as amended by Act 4118, because even after the foreclosure of the mortgagee, the mortgagor is still entitled to retain possession within one year from the registration of the certificate of sale, unless the court issues a writ of possession upon the mortgage putting up the corresponding bond and after hearing the mortgagor, which situations has not yet arisen in the case at bar;

e)

The plaintiff SIM has been required by defendant DBP to secure additional logging concessions to supplement its forest resources as a basic condition to restructure its loan, with assurance by defendant DBP that said loan would be restructured, and plaintiff has acquired Basey Wood Industries, Inc. from a P20M loan extended by Far East Bank & Trust Co. with a current floating rate of interest, and this investment stands to be lost totally by the plaintiff;

f)

The defendant DBP is imposing surcharges, penalties, and exorbitant and unconscionable rates of interest in spite of the fact that plaintiff SIM is prevented by fortuitous event from complying therewith, such as, but not limited to the default of the Republic of the Philippines in the payment of its worl(sic) loan, which has produced serious repercussions and legal complications to plaintiff SIM;

g)

The said impositions are not warranted by any promissory note or mortgage;

h)

The said taking over of possession and foreclosure would paralyze the business operation of the plaintiff SIM, since the plaintiff is prevented from bringing out any property or equipment;

i)

This will also panic creditors and suppliers of plaintiff SIM, and invite several judicial or extrajudicial actions to take over the assets of the company;

j)

The said acts will also result in legal and commercial complications with the foreign buyers of the plaintiff SIM, who have made cash advances for products to be produced and delivered to them by plaintiff SIM;

k)

The disruption of the operation of the plant would result in rendering jobless 2,300 employees of the plaintiff SIM, and in the looting of company properties, theft and/or destruction of its assets, etc.;

xxx xxx xxx."[36]

In short, while private respondent SIM admits that it had entered into a mortgage contract with DBP involving the Agusan del Sur plant, SIM denies that the contract has a power of attorney authorizing the DBP to take possession of the Agusan del Sur plant. In the same breadth, it asserts that the DBP's "taking over" of possession of the plant, apparently in pursuance of the mortgage contract, would irretrievably damage the plant's operation and that

such occurrence would warrant a declaration that the DBP "is not entitled to foreclose the mortgage." Notably, the supplemental complaint cleverly intertwines the issue of the validity of the mortgage of November 8, 1984 with the enforcement of the preliminary injunction issued in Civil Case No. 10387 that prevented the DBP's pursuit of the deficiency resulting from the foreclosure sale in June 1984.

However, such ingenious attempt may not efface the fact that the ultimate goal of the supplemental complaint is two-pronged: (a) to retake possession of the plant, and (b) to abrogate the provisions of the mortgage contract or to nullify it, for its own survival. A prayer for the nullification of the mortgage is a prayer affecting real property and hence, it is a real action. Verily, as this Court held in *Fortune Motors (Phils.), Inc. v. Court of Appeals*, a motion to dismiss an action filed in Manila to annul an extrajudicial foreclosure sale of real property located in Makati on the ground of improper venue should be granted as the action was a real action affecting real property.[37] Hence, the supplemental complaint should have been filed as a separate action in Agusan del Sur in accordance with the following provision of Rule 4 of the Rules of Court:

"Sec. 2. Venue in Courts of First Instance (now Regional Trial Courts).- Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies.

xxx xxx xxx."

The trial court also incorrectly relied upon the ruling in *De la Rama Steamship Co., Inc. v. National Development Company*. [38] In its Order of August 20, 1985, the trial court stated that in the *De la Rama* case, this Court "implicitly recognized the propriety of admitting a supplemental pleading although the causes therein mentioned are not in any way relevant and material to the action originally pleaded as a means of serving 'the ends of speedy administration of justice or a prompt dispatch of cases.' "[39] The *De la Rama* ruling should be understood in its proper context. In that case, the original action and the supplemental pleading stemmed from one and the same contract, i.e., the management agreement dated October 26, 1949 between *De la Rama Steamship Co.* and the NDC. Thus, the joinder of causes of action would still have been in accord with the Rules. Since the supplemental pleading was filed after the original action was decided, this Court ordered that it "be enrolled in the court below as a new action." There is thus a marked difference between the facts of the case at bar and those obtaining in *De la Rama*.

Multiplicity of suits should be avoided if the filing of a separate and independent action to recover a claim would entail proving exactly the same claim in an existing action.[40] It can not however, be avoided when the cause of action in the two complaints are distinct and separate from each other.

With respect to the validity of the restraining order issued on June 14, 1985 and the trial court's directive enjoining the parties to maintain the status quo ante litem, petitioner contends that these are contrary to P.D. 385[41] and Sec. 5, Rule 59 of the Rules of Court, as amended by B.P. Blg. 224,[42] as well as this Court's Circular No. 13 dated May 17, 1984.[43]

That issue has been mooted by the invalidity of the order admitting the supplemental complaint. "A temporary restraining order is merely an ancillary process to an action owing its existence entirely and exclusively from the latter. It cannot survive the main case which it was but an incident." [44]

It should be stressed, moreover, that P.D. 385 should only be invoked after the factual basis for its application has been laid through the presentation of evidence in a trial on the merits. It cannot be applied automatically.[45] It is noteworthy, too, that the TRO was issued on June 14, 1985, the same day the motion to admit the supplemental pleading was filed, while the directive to maintain the status quo ante litem was incorporated in the order of August 20, 1985 or more than two (2) months after the issuance of the restraining order. By force of law, the TRO

expired on the 20th day after notice of the June 14, 1985 TRO. It is evident therefore that respondent judge acted with grave abuse of discretion in extending the lifetime of the restraining order that had in the meantime expired, by issuing another order in violation of B.P. Blg. 224. As such, the second order of August 20, 1985 as far as it ordered the return to the status quo ante litem is concerned, is a "patent nullity"[46] because the 20-day lifetime of a restraining order is non-extendible.[47] The court is without discretion to extend such period considering the mandatory tenor of the Rule.[48]

On the issue of whether or not the transfer of private respondent SIM's assets to APT warrants the dismissal of this petition, the Court of Appeals erred in holding that petitioner which should pursue the claim against SIM is no longer the real party-in-interest and therefore, the instant case for certiorari should be dismissed.[49] Transfer of interest from a litigant to another person or entity is a reason for substitution of the former in a case. It is not a ground for dismissal of the case or petition. Thus, in the Resolution of March 26, 1990,[50] this Court ordered the substitution of the original petitioner by Asset Privatization Trust "pursuant to Sec. 20, Rule 3 of the Rules of Court,"[51] now Sec. 19 of Rule 3 of the 1997 Rules of Civil Procedure.

WHEREFORE, the Resolutions of August 25, 1987 and November 25, 1987 of the Court of Appeals are SET ASIDE and the Decision of February 18, 1987 of the same appellate court is REINSTATED and AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, p. 392.

[2] Ibid., pp. 425-430.

[3] Ibid., p. 432.

[4] Rodolfo M. Cuenca and Manuel I. Tinio, stockholders of SIM, appeared as private respondents in the title of the motion for extension of time to file petition for review on certiorari that was filed by then petitioner DBP (Rollo, p. 2). Atty. Magtanggol Gunigundo, as counsel for "respondents," opposed that motion (Ibid., p. 11). However, in the comment on the petition (Ibid., p. 154) that he filed in compliance with the Resolution of March 26, 1988 (Ibid., p. 151), Atty. Gunigundo stated that it was filed by "respondents (except Rodolfo M. Cuenca & Manuel I. Tinio)". He also filed a manifestation and motion stating that he had not been retained by Cuenca and Tinio as counsel in this petition and therefore he had no authority to receive copies of the petition served upon him for those two respondents (Ibid., p. 343). The Court required petitioner to comment on that manifestation (Ibid., p. 345). In compliance therewith, petitioner asserted that since Atty. Gunigundo was the counsel of all respondents in the proceedings below, he should represent Cuenca and Tinio in this petition because he had not withdrawn as counsel for the two respondents. Hence, service upon him of the petition is service upon all respondents (Ibid., p. 351). Nevertheless, in his reply to the comment of petitioner on his manifestation and motion (Ibid., p. 377), Atty. Gunigundo asserted that he could "not presume to act as lawyer" for Cuenca and Tinio. In its effort to notify those respondents of the proceedings before this Court, it directed that they be personally served copies of the petition (Ibid., p. 435 & 438). The Court also required the Chairman of the Presidential Commission on Good Government (PCGG) and the APT to furnish this Court with the respective addresses of Cuenca and Tinio (Ibid., p. 461). However, service upon Tinio could not be made as his address "no longer exist(ed)." A copy of the petition was served upon Cuenca in his residence but because he failed to file his comment thereon, on April 15, 1991, the Court required him to show cause why he failed to file his comment

thereon, on April 15, 1991, the court required him to show why he should not be held in contempt of court such failure (Ibid., p. 478). On March 25, 1991, Atty. Guinigundo filed a one-sentence comment for Cuenca adopting as Cuenca's the comment he had filed for SIM (Ibid., p. 479). On April 22, 1991, however, Atty. Rowel S. Barba of the law firm of Ponce Enrile Cayetano Reyes & Manalastas appeared for Cuenca (Ibid., p. 484) while K.V. Faylona & Associates entered its appearance as counsel for Tinio (Ibid., p. 485). On May 10, 1991, Ponce Enrile Cayetano Reyes & Manalastas withdrew its appearance as counsel for Cuenca (Ibid., p. 488). On May 15, 1991, Cuenca, through Dr. Guillermo O. Veneracion, Jr., filed a manifestation/compliance stating that he should not be cited in contempt of court because he had filed a comment on the petition (Ibid., p. 492). Finding his explanation unsatisfactory, the Court imposed a fine of P500 upon Cuenca (Ibid., p. 503). On September 6, 1991, Atty. Gunigundo, with the conformity of Cuenca, withdrew his appearance as Cuenca's counsel (Ibid., p. 504). Thereafter, Dr. Veneracion filed a complaint/manifestation reproducing the comment filed by Atty. Gunigundo for SIM (Ibid., p. 507). However, on January 17, 1994, Dr. Veneracion also withdrew his appearance as counsel for Cuenca (Ibid., p. 689). Notably, Atty. Gunigundo also withdrew his appearance "in this case" (Ibid., p. 629). He was substituted as counsel for SIM by Beltran Cuasay De Grano & Mendoza (Ibid., p. 633).

[5] Petition, p. 2-3.

[6] Rollo, pp. 179-189.

[7] Ibid., pp. 191-200.

[8] Ibid., p. 73.

[9] Petition, pp. 3-4.

[10] Rollo, p. 89.

[11] Ibid., pp. 81 & 90.

[12] Ibid., p. 81.

[13] Ibid., p. 78.

[14] Ibid., pp. 80-86.

[15] Ibid., pp. 87 & 215.

[16] Ibid., p. 88.

[17] Ibid., pp. 216-219.

[18] Ibid., p. 221.

[19] Ibid., p. 223.

[20] Composed of Associate Justices Rodolfo A. Nocon (ponente), Ricardo P. Tensuan and Felipe B. Kalalo.

[21] L-17699, March 30, 1962, 4 SCRA 746.

[22] Rollo, pp. 307-317.

[23] Ibid., pp. 320-322.

[24] Under the 1997 Rules of Civil Procedure the last sentence of this rule has been changed to: "The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading."

[25] Shoemart, Inc. v. Court of Appeals, GR. No. 86956, October 1, 1990, 190 SCRA 189, 196 citing Pasay City Government v. CFI of Manila, Branch X, L-32162, September 28, 1984, 132 SCRA 156, 169 and British Traders' Insurance Co., Ltd. v. Commissioner of Internal Revenue, L-20501, April 30, 1965, 13 SCRA 719.

[26] Delbros Hotel Corporation v. Intermediate Appellate Court, G.R. No. 72566, April 12, 1988, 159 SCRA 533, 543 citing 61 Am. Jur. 2d 286.

[27] G.R. No. 80001, February 27, 1989, 170 SCRA 711.

[28] Ibid., pp. 718-721.

[29] Navoa v. Court of Appeals, 321 Phil. 938, 947-948 (1995).

[30] Rollo, p. 210.

[31] Section 5, Rule 2.

[32] 323 Phil. 606, 626 (1996).

[33] The Dial Corporation v. Soriano, G.R. No. L-82330, May 31, 1988, 161 SCRA 737, 742 citing Hernandez v. DBP, L-31095, June 18, 1976, 71 SCRA 290,292.

[34] This rule provides that personal actions "may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff."

[35] Hernandez v. DBP, supra.

[36] Rollo, pp. 210-212.

[37] G.R. No. 76431, October 16, 1989, 178 SCRA 564, 568-569.

[38] 116 Phil. 1097 (1962).

[39] Rollo, p. 221.

[40] See: Vda. de Chi v. Tañada, G.R. No. L-27274, January 30, 1982, 111 SCRA 190, 197.

[41] This decree requires government financial institutions to foreclose mandatorily all loans with arrearages, including interest and charges, amounting to at least twenty percent (20%) of the total outstanding obligation. Sec. 2 thereof provides that "(n)o restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings."

[42] As amended by B.P. Blg. 224, Sec. 5 of Rule 58 now reads:

"SEC. 5. Preliminary injunction not granted without notice; issuance of restraining order.-No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the judge to whom the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. Within the said twenty-day period, the judge must cause an order to be served on the defendant, requiring him to show cause at a specified time and

place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the corresponding order. In the event that the application for preliminary injunction is denied the restraining order is deemed automatically vacated.

Nothing herein contained shall be construed to impair, affect or modify in any way any rights granted by, or rules pertaining to injunctions contained in, existing agrarian, labor or social legislation."

[43] This circular enjoins Justices of the then Intermediate Appellate Court and the judges of lower courts to strictly comply with the provisions of P.D. No. 385, P.D. 1818 and B.P. Blg. 224.

[44] Roldan, Jr. v. Arca, L-25434, July 25, 1975, 65 SCRA 336, 344 and National Sugar Workers Union v. La Carlota Sugar Central, L-23569, May 25, 1972, 45 SCRA 104, 109.

[45] Sps. Almeda v. Court of Appeals, 326 Phil. 309, 323-325 (1996) citing Filipinas Marble Corporation v. Intermediate Appellate Court, G.R. No. 68010, May 30, 1986, 142 SCRA 180 and Republic Planters Bank v. Court of Appeals, G.R. No. 95249, September 2, 1992, 213 SCRA 402.

[46] Cabungco v. Court of Appeals, G.R. No. 78265, January 22, 1990, 181 SCRA 313, 315.

[47] Golangco v. Judge Villanueva, 343 Phil. 937, 946 (1997).

[48] Federation of Land Reform Farmers of the Philippines v. Court of Appeals, 316 Phil. 226, 234 (1995).

[49] Resolution of August 20, 1985; Rollo, p. 320.

[50] Rollo, p. 432.

[51] SEC. 20. Transfer of interest. - In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

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