

**NILO H. RAYMUNDO, PETITIONER, VS. HON. COURT OF APPEALS,  
SIXTEENTH DIVISION, HON. JUDGE, RTC, BR. 133, MAKATI, METRO  
MANILA AND GALERIA DE MAGALLANES ASSOCIATION, INC.,  
RESPONDE...**

*G.R. No. 97805. September 02, 1992*

Ponente: NOCON, J.

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**NOCON, J.:**

This is a petition for certiorari and prohibition with restraining order and preliminary injunction to annul and set aside the decision of the Court of Appeals dated March 11, 1991[1] dismissing petitioner's petition for certiorari and prohibition which assailed the Orders[2] dated June 1, 1990[3] and June 29, 1990[4] of the trial court.

It appears on record that on July 5, 1989, the administrator of the Galleria de Magallanes Condominium discovered that petitioner Nilo Raymundo, who was an owner/occupant of Unit AB-122 of said condominium, made an unauthorized installation of glasses at the balcony of his unit in violation of Article IV, Section 3 paragraph (d) of the Master Deed and Declaration of Restrictions of the Association, which states that:

“d. Nothing shall be done or placed in any unit or in the common areas which is beyond or will impair the structural strength of the buildings or alter the original architecture, appearance and specifications of the building, including the external facade thereof.”[5]

Thereafter, the administrator of said condominium reported said violation to the Board of Directors of the private respondent Galleria de Magallanes Association, Inc. in a special meeting held on July 8, 1989 and the former sent a letter dated July 12, 1989[6] to the petitioner demanding the latter to remove the illegal and unauthorized installation of glasses at his unit.

Petitioner refused, consequently, private respondent filed a complaint for mandatory injunction against petitioner on February 21, 1990 with the Regional Trial Court of Makati, Branch 133 in Civil Case No. 90-490.

On March 12, 1990, petitioner filed a Motion for extension of time to file an Answer[7] as well as a Motion for production of document[8] which were granted in an Order dated March 16, 1990[9]

However, on March 23, 1990, instead of an Answer, petitioner filed a Motion to Dismiss with the trial court on the ground that said court has no jurisdiction over the present case since a complaint for mandatory injunction is within the exclusive original jurisdiction of the Metropolitan Trial Court.

The Motion to Dismiss was denied in the Order of June 1, 1990, the pertinent portion of which reads:

“This is a suit for mandatory injunction. Under Sec. 21 of BP 129, as amended, it is the Regional Trial Court which has the legal competence to issue the same. Corollarily, the second ground must be denied. The action is essentially one which falls within the jurisdiction of the Regional Trial Court.

“WHEREFORE, the Motion to Dismiss is hereby denied, for lack of merit.”[10]

Likewise, petitioner's Motion for Reconsideration was denied in the Order of June 29, 1990 which We quote, to wit:

“As denominated in the complaint itself, this is a suit for mandatory injunction, and the nature of the action as designated by the plaintiff is substantiated by the allegations of the complaint itself. Such being the case, Sec. 21 of BP 129 governs. The claims for attorney's fees is incidental to the nature of the complaint as one of mandatory injunction which is also attested by the prayer in the complaint “to remove the illegal and unauthorized installation of glasses at Unit AB-122 of the Condominium within five (5) days from receipt of the order xxx” and, therefore, does not affect the legal competence of the Court to act on the complaint.”[11]

On elevation to the appellate court in a petition for certiorari and prohibition with restraining order and preliminary injunction, the petition was again dismissed on March 11, 1991.

Hence, this petition alleging want of jurisdiction of the trial court to hear and decide private respondent's complaint for mandatory injunction considering that private respondent's sole pecuniary claim of P10,000.00 as attorney's fees in Civil Case No. 90-490 is within the original and exclusive jurisdiction of the Metropolitan Trial Court as provided for under Section 33 of B.P. 129.

We do not agree.

The contention of the petitioner is devoid of merit because private respondent's complaint is an action to compel the petitioner to remove the illegal and unauthorized installation of glasses at Unit AB-122 of the condominium which is not capable of pecuniary estimation and falls under the exclusive jurisdiction of the Regional Trial Court. Section 33 of Batas Pambansa Bilang 129 is not applicable in the instant case, but paragraph (1), Section 19 and paragraph (1), Section 21 of said law which provide:

“Sec. 19. Jurisdiction in civil cases. – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;”

xxx xxx xxx

“Sec. 21. Original Jurisdiction in other cases. - Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions;”

A civil action in which the subject of the litigation is incapable of pecuniary estimation has invariably been held to be within the exclusive original jurisdiction of the Regional Trial Courts.

“In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts [now municipal trial courts] or in the courts of first instance [now regional trial courts] would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance [now regional trial courts].”[12]

As correctly stated by the Court of Appeals, the question for resolution is whether or not the petitioner violated the provisions of the Master Deed and Declaration of Restriction of the corporation, and if so, to remove the illegal and unauthorized installation of glasses at Unit AB-122 of the Condominium. Clearly, the issue is

incapable of pecuniary estimation.

In the instant case, the claim of attorney's fees by the private respondent in the amount of P10,000.00 is only incidental to its principal cause of action which is for the removal of the illegal and unauthorized installation of the glasses made by the petitioner and therefore, said amount is not determinative of the jurisdiction of the court.

Note should be taken, however, that the trial court had erroneously considered the complaint as one for mandatory injunction, misled perhaps by the caption of the complaint.

A writ for mandatory injunction is a provisional remedy. It is provisional because it constitutes a temporary measure availed of during the pendency of the main action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.[13]

WHEREFORE, the petition for certiorari and prohibition with restraining order and preliminary injunction is hereby DISMISSED for lack of merit and the decision of the Court of Appeals promulgated on March 11, 1991 is hereby AFFIRMED.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Padilla, Regalado, and Melo, JJ., concur.

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[1] Rollo, pp. 62-70, CA-G.R. SP No. 22231, Ponente: Justice Justo P. Torres, Jr., with Justice Ricardo J. Francisco and Justice Consuelo Yñares-Santiago concurring.

[2] Penned by Judge Buenaventura J. Guerrero.

[3] Rollo, p. 55.

[4] Id., at p. 60.

[5] Id., at p. 35.

[6] Annex "J", Petition, CA-Rollo, p. 5.

[7] Rollo, pp. 38-40.

[8] Id., at pp. 41-43.

[9] Id., at p. 45.

[10] Id., at p. 55.

[11] Id., at p. 60.

[12] Singsong vs. Isabela Sawmill, 88 SCRA 623 [1979].

[13] Regalado, Remedial Law, 5th Revised Ed. Vol. I.

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