

**THE HEIRS OF THE LATE SANTIAGO MANINGO NAMELY: PIOQUITA C. VDA. DE MANINGO, JANNILDA C. MANINGO, MARY LOU C. MANINGO, AND MINORS: SANTIAGO C. MANINGO JR., CORAZON C. MANINGO, CH...**

*G.R. NOs. 73559-62. March 26, 1990*

Ponente: MEDIALDEA, J.

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**MEDIALDEA, J.:**

This is a petition for review on certiorari seeking the reversal of the decision rendered by the Intermediate Appellate Court (now Court of Appeals) on November 18, 1985, dismissing the following cases: 1) AC-G.R. SP No. 03725, entitled, "The Heirs of the late Santiago Maningo, et al. vs. Hon. Adolfo Alba, as Presiding Judge of RTC Davao, et al., 2) AC-G.R. SP No. 04480 entitled, "Pioquita Vda. de Maningo as Administratrix of the Estate of Santiago Maningo vs. Judge Jose R. Nolasco of the RTC, Tagum, Davao, et al., 3) AC-G.R. SP No. 04517 entitled, "Paramount Insurance Corporation vs. Hon. Jose R. Nolasco, et al., and 4) AC-G.R. SP No. 04377 entitled, "Pioquita Vda. de Maningo vs. Hon. Judge Adolfo Alba, et al."

The antecedent facts in the aforestated cases as found by the respondent appellate court are as follows:

AC-G.R. SP No. 03725

On November 16, 1979, Neville Lamis Enterprises through its proprietor Neville Lamis, filed a complaint for specific performance with damages against Santiago Maningo before the Court of First Instance (now Regional Trial Court) of Pasig, Rizal, docketed as Civil Case No. 35199, to enforce a Memorandum Agreement entered into by them.

During the pendency of the case, on December 8, 1979, Maningo instituted a complaint against Lamis for collection of a sum of money with preliminary attachment before the RTC-Tagum, Davao, docketed as Civil Case No. 1395. The following day, on December 9, 1980, the court issued a writ of preliminary attachment upon a bond of P100,000.00 issued by Paramount Insurance Corporation. As a consequence thereof, the Deputy Provincial Sheriff levied upon certain personal properties of Lamis. The latter filed an ex-parte manifestation with the Provincial Sheriff for the suspension of the levy on the ground that Civil Case No. 1395 was merely a duplicity of Civil Case No. 35199 which was pending in the CFI (now RTC) of Pasig. Lamis further moved for the dismissal of Civil Case No. 1395 based on lis pendens and for improper venue. The court denied the motion in an order dated April 2, 1981.

Lamis went on certiorari to this Court in a petition filed on July 1, 1981 docketed as G.R. No. 57250. On October 30 1981, We rendered a decision granting the petition and ordering the dismissal of Civil Case No. 1395. Said decision became final on April 8, 1982.

Four months later, on August 2, 1982, Lamis filed an urgent ex-parte motion in Civil Case No. 1395 for the confiscation of Maningo's attachment bond. The lower court, on October 18, 1982, issued an order setting for

hearing the issue of damages.

At the said hearing for the reception of evidence on damages suffered by Lamis, both the surety, Paramount Insurance Corp. and Maningo objected to the hearing.

On December 22, 1982, Maningo filed a petition for certiorari and prohibition with this Court, docketed as G.R. No. 62733, alleging the following: That Lamis failed to comply with Section 20, Rule 57, which provides that the application for damages must be made before entry of judgment in the subject case; that Lamis filed his application for damages only after final judgment; that Lamis' claim for damages could not by law, exceed the attachment bond; and that in G.R. No. 57250, Lamis is not entitled to the possession of the tractor unit, which is one of properties attached. The petition was dismissed by this Court in a resolution dated February 28, 1983, for lack of merit. This became final on May 4, 1983.

In view of the dismissal, Lamis filed a motion for the execution of this Court's resolution in G.R. No. 62733 and a motion in Civil Case No. 1395 to be allowed to present evidence for the confiscation of Maningo's attachment bond and for damages.

However, on August 14, 1983, Santiago Maningo died intestate and his counsel moved for the dismissal of Case No. 1395 on the ground that the heirs are no longer interested in the prosecution of the case.

The lower court, on December 28, 1983, denied the above motion and set the case for hearing.

In the meantime, on March 6, 1984, the court issued an order requiring the sheriffs to take into custody in favor of Lamis all attached properties still unreleased by Maningo.

On March 13, 1984, the intestate proceedings of the late Santiago Maningo began in the RTC of Davao, docketed as Sp. Proc. 248.

On May 24, 1984, the lower court issued two orders: 1) an order requiring the surety to pay Lamis the sum of P100,000.00 as the total claim for damages by reason of the unlawful attachment; and 2) another order for the issuance of a writ of execution against the surety. The hearing for the reception of evidence against the heirs was reset to another date.

Hence, on July 10, 1984, the heirs of Maningo filed with the Intermediate Appellate Court, a petition for certiorari, mandamus, with preliminary injunction docketed as AC-G.R. SP No. 03725, seeking to set aside all the orders of the lower court. Upon dismissal thereof, the present petition was filed by the heirs of Santiago Maningo.

AC-G.R. No. 04480

On December 11, 1981, the late Santiago Maningo filed with the Regional Trial Court of Tagum, Branch I, Davao City, a complaint for Foreclosure of Chattel Mortgage, interest, damages and attorney's fees with prayer for attachment against Neville Lamis Enterprises, Neville Lamis and others, docketed as Civil Case No. 147 (Santiago Maningo (deceased), as substituted by his heirs thru Special Administratrix, Mrs. Pioquita Vda. de Maningo v. Neville Y. Lamis Enterprises and Neville Lamis). The complaint was later amended to Replevin, damages and attorney's fees.

On December 21, 1981, the court issued an order for the seizure of a bulldozer, upon a replevin bond of P340,000 by Paramount Insurance Corporation.

On May 25, 1982, Lamis moved for the dismissal of the aforesaid Civil Case No. 147 and to cite Maningo for contempt on the ground of *litis pendencia* or multiplicity of suits; that the said case is barred by the pendency of his Civil Case No. 35199 then pending with Regional Trial Court of Pasig and also by the prior judgment of this

Court in G.R. No. 57250 dismissing Civil Case No. 1395 filed by Maningo.

On July 2, 1982, Lamis filed with this Court a petition for certiorari and prohibition, docketed as G.R. No. 61419, to dismiss Civil Case No. 147 on the ground of *litis pendencia*. In a resolution dated December 15, 1982, We ordered the dismissal of Civil Case No. 147.

One and a half years later, on June 11, 1984, Lamis filed a motion in Civil Case No. 147 for the reception of evidence on the damages he sustained by reason of the issuance of the writ of *replevin*. Despite objections by the surety, Paramount Insurance Corporation, the lower court granted the said motion, and in an order dated September 20, 1984, it required the Estate of Maningo to pay to Lamis, compensatory damages by reason of the unlawful issuance of *replevin*.

The Administratrix of Maningo's estate filed a petition for certiorari with preliminary injunction with this Court seeking the dismissal of Lamis' action for damages in the lower court. We, however, referred the case to the Intermediate Appellate Court for proper determination docketed as AC-G.R. SP No. 04480.

### **SP-04377**

In the meantime, in an order dated September 20, 1984, the Regional Trial Court in Civil Case No. 147 awarded Lamis, et al. the amount of P7,677,177.00 as compensatory damages by reason of the issuance of the writ of *replevin*. On September 21, 1984, writs of execution were issued by the court and the cash deposits Santiago Maningo, now deceased, with the Philippine National Bank, Davao Branch and the Bank of the Philippine Islands, Davao Branch, were ordered garnished.

On September 25, 1984, Lamis filed an *ex-parte* application in Special Proceedings No. 248, for the release of Maningo estate's garnished deposits which was granted, and an order was issued directing the banks concerned to release to the sheriff the cash deposits of Maningo.

Prior to the issuance of the above-stated order, however, the court had authorized the Special Administratrix of Maningo's estate to withdraw in cash from the Philippine National Bank, Davao Branch, the amounts of P654,963.03 and P90,829.45. On a motion for clarification, the court issued an order on September 26, 1984, setting aside its previous order allowing the special administratrix to withdraw the amount from the bank, and declared the branch manager and branch attorney of PNB in contempt of court.

Aggrieved, Pioquita Vda. de Maningo, special administratrix of the estate of Santiago Maningo, filed with the Intermediate Appellate Court on October 2, 1985, a petition for certiorari, *mandamus* with preliminary mandatory injunction and damages against the respondent judge of RTC, Tagum, Davao, (Special Proc. No. 248), Neville Lamis and the Provincial Deputy Sheriffs, for unlawfully intervening in Civil Case No. 147 and praying that all orders of the respondent judge pertaining to the garnishment of the money deposited by the decedent Maningo be nullified and set aside.

### **SP-04517**

On the other hand, on September 21, 1984, the surety, Paramount Insurance Corporation, appealed to the respondent appellate court from the order of the trial court making it liable for the sum of P340,000.00. On the same date, the trial court issued a writ of execution in Civil Case No. 147.

The surety, Paramount Insurance Corporation, filed with this Court a petition for certiorari, prohibition with preliminary injunction against Judge Jose R. Nolasco of the Regional Trial Court of Tagum, Davao and against Lamis. We referred the case to the Intermediate Appellate Court (now Court of Appeals) on October 8, 1984.

On November 18, 1985, the Intermediate Appellate Court (now Court of Appeals) rendered judgment on the above four cases, namely, SP-03725, SP-04480, SP-04517 and SP-04377, the dispositive portion of which states:

"WHEREFORE, premises considered, the petitions in SP-03725, SP-04480 and SP-04517 are all dismissed with costs against the petitioners, while in SP-04377 including the PNB's intervention thereon, the petition is also dismissed insofar as the orders of Judge Adolfo Alba dated September 25 and 26, 1984 in SP Proc. No. 248 are concerned. However, his (Judge Alba) orders dated September 29, 1984, October 1, 1984, October 2, 1984 and October 3, 1984 are hereby annulled and set aside. No costs.

"SO ORDERED." (p. 88, Rollo)

Hence, the present petition, which was filed on February 19, 1986. We issued a temporary restraining order on February 20, 1986, against the implementation of the orders of the trial court on the award of damages, and the decision of the Intermediate Appellate Court (now Court of Appeals).

For Us to consider is the following error assigned by petitioners:

"THE RESPONDENT HONORABLE INTERMEDIATE APPELLATE COURT, WITH ALL DUE RESPECT, HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND/OR SANCTIONED SUCH DEPARTURE OF THE LOWER COURT WHEN IT AFFIRMED THE PROCEEDINGS CONDUCTED BY THE LOWER COURTS (RTC-TAGUM, DAVAO, BRANCH II IN CIVIL CASE NO. 1395 AND RTC-TAGUM, DAVAO BRANCH I IN SP. CIVIL CASE NO. 147), IN ALLOWING RESPONDENT LAMIS TO PRESENT EVIDENCE ON ALLEGED DAMAGES SUSTAINED AND IN AWARDING DAMAGES, EVEN LONG AFTER THE ABOVE-MENTIONED CASES HAS BEEN ORDERED DISMISSED BY THIS HONORABLE SUPREME COURT WITHOUT AWARD OF DAMAGES. (pp. 33-34, Rollo)

Petitioners contend that Civil Case No. 1395 was ordered dismissed by Us in G.R. No. 57250 upon petition of private respondent Limis; and that said decision became final on April 8, 1982 long before the latter applied for damages sustained by reason of the unlawful attachment.

Anent Civil Case No. 1395, the respondent appellate court, in AC-G.R. SP No. 03725, made the following findings:

"Actually, this matter had already been threshed out by the deceased Santiago Maningo to the Supreme Court when (he) filed a petition for certiorari and prohibition on December 22, 1982 which was docketed therein as G.R. L-62733. Unfortunately, the Supreme Court, in a minute resolution dated February 28, 1983 dismissed the aforesaid petition, (see p. 103, Annex L 03725) which resolution became final on May 4, 1983." (p. 77, Rollo)

We agree with the aforequoted findings of the appellate court. The principle of *res judicata* is applicable herein. Its requisites are present in the instant case, namely: 1) the presence of a final former judgment; 2) the former judgment was rendered by a court having jurisdiction over the subject matter and the parties; 3) the former judgment is a judgment on the merits; and 4) there is between the first and second actions, identity of parties, of subject matter and of cause of action (*Pantranco North Express, Inc. v. NLRC*, No. 64152, December 29, 1983, 126 SCRA 526).

We find that Our Resolution in G.R. No. 62733 on February 28, 1983 is a bar to SP No. 03725 subject of this petition for review. G.R. No. 62733 is a petition for certiorari filed by Maningo, who is now succeeded by petitioners herein, questioning the order of the lower court granting the application for damages of Lamis in Civil Case No. 1395, and alleging: that Lamis failed to comply with Rule 57, Sec. 20 insofar as the application for damages must be made before entry of judgment in the subject case; and that Lamis made such application only

after final judgment. These are the very same issues and contentions raised by the heirs in the present petition with respect to AC-G.R. SP No. 03725.

It is worthy to note that G.R. No. 62733 was dismissed with finality by this Court on February 28, 1983 and entry of final judgment was made on May 4, 1983. While contained in a minute resolution, the dismissal was an adjudication on the merits of the case and constituted a bar to a relitigation of the issues raised therein under the rules of res judicata (*Commercial Union Assurance Company Limited v. Lepanto Consolidated Mining Company*, L-43342, October 30, 1978, 86 SCRA 79; *Sy v. Tuvera*, No. 76639, July 16, 1987, 152 SCRA 103). A final judgment on the merits is conclusive as to matters put in issue and actually determined by the court, when they are raised again in a subsequent litigation between the same parties, even though it is irregular or erroneous. Hence, whether Our resolution in G.R. No. 62733 is right or wrong, is of no importance herein. As long as the judgment in that case had become final, the issues that were litigated therein cannot be reopened by the parties in this subsequent petition, whether erroneously decided or not.

With respect to AC-G.R. SP No. 04480, petitioners allege that Civil Case No. 147 was also ordered dismissed on December 15, 1982 by this Court upon petition of private respondent Lamis in G.R. No. 61419; and that the said dismissal became final on March 3, 1983 long before Lamis applied for damages sustained by reason of unlawful replevin.

The respondent appellate court, on this matter, ruled, inter alia:

"Thus, after the Supreme Court in a decision rendered on December 15, 1982 in G.R. L-61419, has ordered for (sic) the dismissal of Civil Case No. 147, the discharge of the writ of replevin issued in the aforesaid civil case is likewise necessarily included therein. Hence, the respondent judge has all the reason to order the return of the property subject of the replevin order and to proceed in hearing and adjudicating whatever damages the defendants (Lamises) may have suffered by reasons thereof." (p. 79, Rollo)

We find the latter portion of the ruling of the appellate court as aforequoted, incorrect.

Section 10 of Rule 60 of the Rules of Court provides that in the recovery of damages against the bond posted by the applicant in replevin cases, the procedure shall follow that what is laid down in Section 20 of Rule 57, which reads:

"Sec. 20. Claim for damages on account of illegal attachment. – If the judgment on the action be in favor of the party against whom attachment was issued, he may recover upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

"If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court."

As may be gathered from Section 20, Rule 57, the claim for damages resulting from wrongful seizure of personal property must be filed in the same action in which the writ of attachment or the writ of replevin was issued; otherwise, it is barred (*Tan-Suyco v. Javier*, 21 Phil. 82; *Nueva-España v. Montelibano*, 58 Phil. 807). It may be presented, before trial, in the answer by way of counterclaim (*Medina v. Maderera del Norte de Catanduanes*, 51

Phil. 240). In the discretion of the court, it may also be made at any other time even after the rendition of final judgment if the court has still jurisdiction over the case (*Visayan Surety & Insurance Corp. v. Pascual*, 85 Phil. 779). Hence, if the application for damages is not made in compliance with the procedure laid down in the rules, even the surety on the bond is relieved from liability therefor. The remedy provided by law is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to damages (*Santos v. Mair*, 36 Phil. 350; *Japco v. The City of Manila*, 48 Phil. 851; *Cruz v. Manila Surety & Fidelity Co., Inc., et al.*, 92 Phil. 699).

In the case at bar, there is no showing that respondent Lamis had timely filed his claim for damages arising from the wrongful issuance of the writ of replevin in Civil Case No. 147, or prior to the dismissal on December 15, 1982, of the replevin case, upon Lamis' petition for certiorari. It was only years later on June 11, 1984 that Lamis applied for damages on the replevin bond, after the case had long been dismissed. The trial court no longer had jurisdiction and control over the case when it awarded damages after it was dismissed and thrown out of court in the certiorari case filed by Lamis himself. Thus, the judgment of the trial court awarding damages against the estate of Maningo in the amount of P7,677,177.00 in the replevin case is null and void. Logically, the petitioners' surety, Paramount Insurance Corporation, should be released from its liability under the bond. Notwithstanding Our dismissal of the latter's petition seeking review on certiorari of the same decision of the respondent appellate court on July 2, 1986, upholding the award of damages to Lamis, We release said surety from liability based on the same principles We have pronounced in the foregoing discussion.

ACCORDINGLY, the petition is hereby GRANTED in part, and the judgment of the Intermediate Appellate Court (now Court of Appeals) dated November 18, 1985 with respect to AC-G.R. SP No. 04480, which upheld the award of damages by the trial court in Civil Case No. 147, is REVERSED and SET ASIDE. In all other respects, the petition is DENIED and the judgment of the respondent appellate court is AFFIRMED. The temporary restraining order issued on February 20, 1986 is lifted.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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