

SECOND DIVISION

[G.R. No. 123555, January 22, 1999]

**PROGRESSIVE DEVELOPMENT CORPORATION, INC.,
PETITIONER, VS. COURT OF APPEALS AND WESTIN SEAFOOD
MARKET, INC., RESPONDENTS.**

DECISION

BELLOSILLO, J.:

May the lessee which instituted before the Metropolitan Trial Court an action for forcible entry with damages against its lessor file a separate suit with the Regional Trial Court against the same lessor for moral and exemplary damages plus actual and compensatory damages based on the same forcible entry?

On grounds of *litis pendencia* and forum-shopping, petitioner invokes established jurisprudence that a party cannot by varying the form of action or adopting a different method of presenting his case evade the principle that the same cause of action shall not be litigated twice between the same parties or their privies.^[1] Petitioner therefore prays for reversal of the decision of the Court of Appeals dated 27 May 1995, as well as its Resolution dated 17 January 1996 denying reconsideration, which upheld the denial by the Regional Trial Court of petitioner's motion to dismiss private respondent's damage suit.

The antecedents: On 27 May 1991 petitioner leased to private respondent Westin Seafood Market, Inc., a parcel of land with a commercial building thereon located at Araneta Center, Cubao, Quezon City, for a period of nine (9) years and three (3) months, i.e., from 2 January 1989 to 30 April 1998, with a monthly rental of approximately P600,000.00. The contract contained, among others, the following pertinent terms and conditions:

EFFECT OF VIOLATIONS

25. LESSEE hereby agrees that all the provisions contained in this Contract shall be deemed as conditions, as well as covenants, and that this Contract shall be automatically terminated and cancelled without resorting to court action should LESSEE violate any or all said conditions, including the payment of Rent, CUSA and other charges indicated in the FLP when due within the time herein stipulated and in any such cases, LESSEE hereby irrevocably appoints LESSOR, its authorized agents, employees and/or representatives as his duly authorized attorney-in-fact, even after the termination, expiration or cancellation of this Contract, with full power and authority to open, enter, repossess, secure, enclose, fence and otherwise take full and complete physical possession and control of the leased premises and its contents without resorting to court action and/or to summarily disconnect electrical and/or water

services thereof, and that LESSEE hereby irrevocably empowers LESSOR, his authorized agents, employees and/or representatives to take inventory and possession of whatever equipment, furniture, articles, merchandise, appliances, etc., found therein belonging to LESSEE, consignors and/or to any other persons and to place the same in LESSOR's warehouse or any other place at LESSOR's discretion for safekeeping; charging LESSEE the corresponding storage fees therefor; that in case LESSEE fails to claim said equipment, furniture, articles, merchandise, appliances, etc. from storage and simultaneously liquidate any liability with LESSOR within seven (7) days from date of said transfer to LESSOR's warehouse, LESSOR is likewise hereby expressly authorized and empowered by LESSEE to dispose of said property/properties in a public sale through a Notary Public of LESSOR's choice and to apply the proceeds thereof to whatever liability and/or indebtedness LESSEE may have to LESSOR plus reasonable expenses for the same, including storage fees, and the balance, if any, shall be turned over to LESSEE; that LESSEE hereby expressly agrees that any or all acts performed by LESSOR, his authorized agents, employees and/or representatives under the provisions of this Section may not be the subject of any petition for a Writ of Preliminary Injunction or Mandatory Injunction in court, and that LESSOR and/or his authorized agents, employees, and/or representatives shall be free from any civil and/or criminal liability or responsibility whatsoever therefor.

TERMINATION OF LEASE

26. Upon the automatic termination of this lease contract, as the case may be, LESSEE shall immediately vacate and redeliver physical possession of the leased premises, including the keys appertaining thereto, to LESSOR in good, clean and sanitary condition, reasonable wear and tear excepted, devoid of all occupants, equipment, furniture, articles, merchandise, etc., belonging to LESSEE or to any other person except those belonging to LESSOR; that should LESSEE fail to comply with this provision, LESSOR is hereby given the same rights and power to proceed against LESSEE as expressly granted in the immediately preceding section.

Private respondent failed to pay rentals despite several demands by petitioner. As of 19 October 1992 the arrearages amounted to P8,608,284.66. Admittedly, non-payment of rentals constituted breach of their contract; thus, pursuant to the express authority granted petitioner under the above-quoted Secs. 25 and 26 of the lease agreement, petitioner on 31 October 1992 repossessed the leased premises, inventoried the movable properties found within and owned by private respondent and scheduled public auction for the sale of the movables on 19 August 1993 with notice to private respondent.

On 26 November 1992 private respondent filed with the Metropolitan Trial Court of Quezon City a complaint against petitioner for forcible entry with damages and a prayer for a temporary restraining order and/or writ of preliminary injunction.^[2] The case was raffled to Branch 40 presided over by Judge Guillermo L. Loja Jr. who issued a temporary restraining order enjoining petitioner from selling private respondent's properties at a public auction.

On 9 December 1992 Judge Loja inhibited himself from trying the case and directed its transfer to Branch 34 presided over by Judge Joselito SD Generoso. Soon after, petitioner filed an urgent motion for the inhibition of Judge Generoso and the immediate reraffle of the case arguing that the summary transfer of the case to Judge Generoso was irregular as it was not done by raffle.

The motion was granted and the case went to Branch 36 presided over by Judge Francisco D. Villanueva. Thereafter, on 22 December 1992, at the continuation of the hearing on the issuance of a writ preliminary mandatory injunction, the parties agreed, among others, on the following: (a) private respondent would deposit with the Philippine Commercial and Industrial Bank in the name of the Metropolitan Trial Court, Branch 36, the amount of P8,000,000.00 to guarantee the payment of its back rentals; (b) petitioner would defer the sale of the personal properties of the Westin Seafood Market, Inc., until a final settlement of the case had been arrived at; (c) petitioner shall allow private respondent to retrieve all the perishable goods from inside the leased premises like frozen meat, vegetables and fish, all properly receipted for; (d) petitioner shall allow three (3) maintenance personnel of private respondent to enter the premises at reasonable working hours to maintain the restaurant equipment; and (e) the parties shall negotiate for the restoration of the premises to private respondent, and if no settlement be arrived at on or before January 8, 1993, the hearing on the merits of the case shall proceed and the disposition of the amount deposited representing the rental arrearages shall be left to the discretion of the court.

This agreement was incorporated in the order of the court dated 22 December 1992^[3] which in effect terminated for all intents and purposes the incident on the issuance of a preliminary writ of injunction.

Private respondent did not comply with its undertaking to deposit with the designated bank the amount representing its back rentals. Instead, with the forcible entry case still pending with the MeTC, private respondent instituted on 9 June 1993 another action for damages against petitioner with the Regional Trial Court of Quezon City. The case was raffled to Branch 101 presided over by Judge Pedro T. Santiago.^[4]

Petitioner filed a motion to dismiss the damage suit on the ground of *litis pendencia* and forum shopping. *On 2 July 1993, instead of ruling on the motion, Judge Santiago issued an order archiving the case pending the outcome of the forcible entry case being heard at the MeTC for the reason that "the damages is (sic) principally anchored on whether or not the defendants (petitioner herein) have committed forcible entry."*^[5] On 2 August 1993 petitioner moved for reconsideration of the order and reiterated its motion to dismiss the suit for damages.

Before petitioner's motion to dismiss could be resolved, private respondent filed with the RTC on 18 August 1993 an amended complaint for damages. On 14 September 1993 it also filed an *Urgent Ex-Parte Motion for the Issuance of a Temporary Restraining Order and Motion for the Grant of a Preliminary Prohibitory and Preliminary Mandatory Injunction*. On the very same day, Judge Santiago issued an order (a) denying petitioner's motion to dismiss, (b) admitting private respondent's amended complaint, and (c) granting private respondent's application

for a temporary restraining order against petitioner.

Thus, petitioner filed with the Court of Appeals a special civil action for certiorari and prohibition on the ground that Judge Santiago acted in excess of his jurisdiction and/or committed grave abuse of discretion amounting to lack of jurisdiction in admitting the amended complaint of private respondent and issuing a restraining order against petitioner; in allowing private respondent to engage in forum shopping; and, taking cognizance of the action for damages despite lack of jurisdiction.^[6]

But the Court of Appeals dismissed the petition due to the failure of petitioner to file a motion for reconsideration of Judge Santiago's order of 14 September 1993 which, it explained, was a prerequisite to the institution of a petition for certiorari and prohibition. It also found that the elements of *litis pendencia* were lacking to justify the dismissal of the action for damages with the RTC because despite the pendency of the forcible entry case with the MeTC the only damages recoverable thereat were those caused by the loss of the use and occupation of the property and not the kind of damages being claimed before the RTC which had no direct relation to loss of material possession. It clarified that since the damages prayed for in the amended complaint with the RTC were those caused by the alleged high-handed manner with which petitioner reacquired possession of the leased premises and the sale of private respondent's movables found therein, the RTC and not the MeTC had jurisdiction over the action of damages.^[7]

Petitioner, aggrieved by the decision of the appellate court, filed the instant petition for review on certiorari under Rule 45 of the Rules of Court alleging that it erred in (a) finding that petitioner failed to avail of its plain, speedy and adequate remedy of a prior motion for reconsideration with the RTC; (b) ruling that the trial judge did not act with grave abuse of discretion in taking cognizance of the action for damages and injunction despite the pendency of the forcible entry case with the MeTC; and, (c) ruling that private respondent did not commit forum shopping since the causes of action before the RTC and MeTC were not identical with each other.

There is merit in the petition. While generally a motion for reconsideration must first be filed before resorting to certiorari in order to give the lower court an opportunity to correct the errors imputed to it^[8] this rule admits of exceptions and is not intended to be applied without considering the circumstances of the case.^[9] The filing of the motion for reconsideration before availing of the remedy of certiorari is not *sine qua non* when the issue raised is one purely of law,^[10] or where the error is patent or the disputed order is void,^[11] or the questions raised on certiorari are the same as those already squarely presented to and passed upon by the lower court.

In its motion for dismissal of the action for damages with the RTC petitioner raised the ground that another action for forcible entry was pending at the MeTC between the same parties involving the same matter and cause of action. Outrightly rejected by the RTC, the same issue was elevated by petitioner on certiorari before the Court of Appeals. Clearly, under the prevailing circumstance, any motion for reconsideration of the trial court would have been a pointless exercise.^[12]

We now turn to the issue of whether an action for damages filed with the Regional Trial Court by the lessee against the lessor should be dismissed on the ground of pendency of another action for forcible entry and damages earlier filed by the same lessee against the same lessor before the Metropolitan Trial Court.

Section 1 of Rule 70 of the Rules of Court provides that any person deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth, or against whom the possession of any land or building is unlawfully withheld, may bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, *together with damages and costs*. The mandate under this rule is categorical: that all cases for forcible entry or unlawful detainer shall be filed before the Municipal Trial Court which shall include not only the plea for restoration of possession but also all claims for damages and costs arising therefrom. Otherwise expressed, no claim for damages arising out of forcible entry or unlawful detainer may be filed separately and independently of the claim for restoration of possession.

This is consistent with the principle laid down in Sec. 1, par. (e), of Rule 16 of the Rules of Court which states that the pendency of another action between the same parties for the same cause is a ground for dismissal of an action. *Res adjudicata* requires that there must be between the action sought to be dismissed and the other action the following elements: (a) identity of parties or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and, (c) the identity in the two (2) preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration.^[13]

It is likewise basic under Sec. 3 of Rule 2 of the Revised Rules of Court, as amended, that a party may not institute more than one suit for a single cause of action. Under Sec. 4 of the same Rule, if two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the other or others. "Cause of action" is defined by Sec. 2 of Rule 2 as the act of omission by which a party violates a right of another.^[14] These premises obtaining, there is no question at all that private respondent's cause of action in the forcible entry case *and in the suit for damages* is the alleged illegal retaking of possession of the leased premises by the lessor, petitioner herein, from which all legal reliefs arise. Simply stated, the restoration of possession and demand for actual damages in the case before the MeTC and the demand for damages with the RTC *both arise from the same cause of action, i.e., the forcible entry by petitioner into the leased premises*.

A comparative study of the two (2) complaints filed by private respondent against petitioner before the two (2) trial courts shows that not only are the elements of *res adjudicata* present, at least insofar as the claim for actual and compensatory damages is concerned, but also that the claim for damages - moral and exemplary in addition to actual and compensatory - constitutes splitting a single cause of action. Since this runs counter to the rule against multiplicity of suits, the dismissal of the second action becomes imperative.

The complaint for *forcible entry* contains the following pertinent allegations -