

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated October 1, 2019 which reads as follows:*

**“G.R. No. 195773 (MULTISTIQ, INC. and JUDITH M. LABURADA, as President, Petitioners, v. MINDS VIEW GRAPHICS ADS, represented by Spouses Jacqueline A. Manhilot and Cesar A. Manhilot, Owner and Manager, respectively, Respondents.)** – Under review is the Decision<sup>1</sup> promulgated on June 29, 2010, whereby the Court of Appeals (CA) reversed the order<sup>2</sup> issued on August 30, 2007 by the Regional Trial Court (RTC), Branch 11, Davao City, which dismissed the case on the grounds of *litis pendentia* and forum shopping.

**Antecedents**

In July 2005, the petitioners entered into a deed of conditional sale<sup>3</sup> with the respondents for the sale of a Mutoh PJ-1634 NX Grand Format Inkjet Printer, valued at ₱3,000,000.00. Both parties agreed on a 24-month installment plan for the payment of the printer. The parties however agreed to enter into an amended deed of conditional sale<sup>4</sup> by changing the installment period from October 27, 2005 to September 27, 2007, when the unit delivered was found to be defective.

The petitioners delivered another unit, but the same was also defective as the printer heads needed replacement just four months after its delivery. The respondents thus wrote a letter to the petitioners stating therein the defect in the unit and a request for technical support under its warranty. In response, the petitioners demanded an advance

<sup>1</sup> *Rollo*, pp. 21-33; penned by Associate Justice Rodrigo F. Lim, Jr., with the concurrence of Associate Justice Angelita A. Gacutan and Associate Justice Nina G. Antonio-Valenzuela.

<sup>2</sup> *Id.* at 95-96; penned by Judge Virginia Hofilefia-Europa.

<sup>3</sup> *Id.* at 37-39.

<sup>4</sup> *Id.* at 40-42.

payment for the repair or replacement of the printer heads for ₱285,000.00, subject to reimbursement upon approval under the warranty clause. The respondents delivered the advance payment but stopped paying the subsequent installments for the unit. Hence, the respondents had only paid for four months – from October 2005 to January 2006 – for a total amount of ₱500,000.00.

On August 7, 2006, the petitioners sent a demand letter to the respondents indicating its delinquency starting February 28, 2006, and its failure to make good its check dated July 31, 2006. As the respondents' outstanding obligation amounted to ₱2,000,000.00 as of June 30, 2007 remained unpaid, the petitioners opted to cancel the deed of conditional sale in accordance with paragraph 4,<sup>5</sup> and demanded the return of the printing machine.

On August 17, 2006, the petitioners filed a complaint against respondents spouses Cesar and Jacqueline A. Manhilot, Loreto Nicolas and a certain John Doe, for *Recovery of Possession with Replevin and Damages*<sup>6</sup> before the RTC in Pasig City, docketed as Civil Case No. 70926-PSG. It was able to recover possession of the printer machine pending litigation.

In its reply to the August 7, 2006 demand letter, the respondents demanded the return of its payments. Subsequently, it filed a complaint before the Department of Trade and Industry (DTI) for reimbursement of amortizations made, but eventually withdrew the same for failure of the representatives of the petitioners to appear on the scheduled hearings.

The respondents filed its *answer with counterclaim*<sup>7</sup> dated September 7, 2006, alleging that the petitioners has no cause of action due to Breach of Warranty. It thereafter filed an action for *Rescission of [c]ontract and/or breach of warranty, damages and attorney's fees*<sup>8</sup> on June 5, 2007 before the RTC in Davao City, docketed as Civil Case No. 31, 586-06. In its *verification*,<sup>9</sup> it declared that it filed a complaint before the DTI but withdrew the same, and that there is a

<sup>5</sup> 4. **CANCELLATION FOR FAILURE TO PAY:** - In the event that the **VENDEE** fails for any reason whatsoever to pay any amount on the due date thereof, the **VENDOR** may, at its sole option and discretion, cancel this Conditional Deed of Sale without need of a court declaration to that effect, by giving the **VENDEE** a written notice of cancellation. Any amount previously paid by the **VENDEE** to the **VENDOR** as of date of such cancellation shall, in such event, be forfeited in full in favor of the **VENDOR**. Id. at 41.

<sup>6</sup> Id. at 45-47.

<sup>7</sup> Id. at 50-59.

<sup>8</sup> Id. at 61-69.

<sup>9</sup> Id. at 69.

pending action for replevin filed against them by the petitioners.<sup>10</sup>

The petitioners moved to dismiss Civil Case No. 31, 586-06, alleging that the respondents have no capacity to sue, and that there was *litis pendentia* and forum shopping.

On August 30, 2007, the RTC in Davao City granted the motion to dismiss, stating as follows:

As to the ground of *litis pendentia*, defendants claim that there is a pending case between the parties before the Regional Trial Court of Pasig City, Branch 154 entitled Multistiq, Inc. versus Cesar A. Manhilot, Jacqueline A. Manhilot, Loreto Nicolas and one John Doe docketed as Civil Case No. 70926-PSG for Recovery of Possession with Replevin. This is anchored on their failure to pay the purchase price of printing machines. In their defense, Spouses Manhilot interposed the failure of Multistiq, Inc. to comply with their warranty as vendors of the printing machine. In this instant case, the cause of action of plaintiff is likewise the breach of warranty in the sale of the printing machines. There is, therefore, identity of parties and identity of reliefs sought.

There is merit in this contention. There is identity in the claims and counter-claims of parties that the outcome of the case in Civil Case No. 70926-PSG will become *res judicata* in this case. The claim of breach of warranty can very well be the defense in the Pasig case. All these arose out of the same transaction which is the sale of printing machines.

There being *litis pendentia*, the filing of this instant case amounts to forum-shopping which is not allowed.

WHEREFORE, in view of the foregoing, the Motion to Dismiss, being meritorious is hereby granted.

This case is hereby ordered DISMISSED.

SO ORDERED.<sup>11</sup>

The respondents moved for reconsideration, but was denied. Aggrieved, it appealed to the CA. On June 29, 2010, the CA set aside and reversed the order issued by the RTC, disposing in the following manner:

WHEREFORE, the appeal is **GRANTED** and the assailed decision is **REVERSED** and **SET ASIDE**. Let the records of this case be **REMANDED** to Branch 11 of the Regional Trial Court, Davao City for trial. The court *a quo* is hereby **DIRECTED** to

<sup>10</sup> Id. at 25-26.

<sup>11</sup> Id. at 95.

continue with the proceedings in Civil Case No. 31, 586-06 with reasonable dispatch.

SO ORDERED.<sup>12</sup>

The CA explained:

x x x x

Indeed, there is an identity of parties in both cases. As borne by the records, this requires no elaboration. As regards the identity of rights asserted and reliefs prayed for, however, we overrule the court *a quo*. In the Pasig RTC case, the action was for recovery of possession which is essentially founded on Multistiq's right to possess the subject personal property, the printer unit. The latter case brought by Minds View was for rescission of contract and/or breach of warranty, which is founded on the privity of contract between the parties.

In an action for replevin, -- which may either refer to the action for the recovery of the personalty itself, or the provisional remedy associated with it -- the possession of the personal property may be obtained by the plaintiff and retained by him during the pendency of such action. Therefore, the claimant (plaintiff) must convincingly show that he is either the owner or one clearly entitled to the possession of the property sought to be recovered, and that the defendant, who is in actual or legal possession thereof, wrongfully detains the same.

It bears emphasizing that rescission involves a contract which, even if valid from its inception, produces a lesion or pecuniary damage to a person which can justify its nullification for equity considerations. As an action, rescission of contract is a remedy granted by law to the contracting parties and third persons to secure reparations for damage caused to them by a contract, valid or otherwise, through the restoration of things to their original condition prior to the celebration of said contract. It is a relief allowed for the protection of one of the contracting parties and even third persons from all injury and damage the contract may cause, or to protect some incompatible and preferential right created by the contract.

Verily, the causes of action of the two cases are not the same. While both reliefs were founded on the same facts, they are not the same, such that any affirmative judgment that may be rendered in favor of one party in the first case would not necessarily result in an affirmative relief for that same party in the second case. Hence, *res judicata* does not exist in this case.<sup>13</sup>

---

<sup>12</sup> Id. at 32.

<sup>13</sup> Id. at 29-30.

The petitioners moved for reconsideration, but was denied.<sup>14</sup> Hence, the instant petition.<sup>15</sup>

### Issue

The petitioners argues that the respondents' defense of breach of warranty in the case before the Pasig RTC for recovery of possession with replevin, was similar to that before the Davao RTC for rescission of contract and breach of warranty.

The respondents, on the other hand, maintains that there was no identity of rights asserted and relief prayed for in both cases which would amount to *litis pendentia* or forum shopping.

Is there forum shopping in the instant case?

### Ruling

The petition is meritorious.

There is forum shopping when "a party repeatedly avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."<sup>16</sup> The test for determining forum shopping is whether the element of *litis pendentia* is present, or whether a final judgment in one case will amount to *res judicata* in another.<sup>17</sup> *Litis pendentia* refers to the situation where two actions are pending between the same parties for the same cause of action, such that either of them becomes unnecessary and vexatious.<sup>18</sup>

Thus, there is *litis pendentia* when the following elements are present, namely: (a) there is identity of parties, or at least such parties as representing the same interests in both actions; (b) there is identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in another.<sup>19</sup> In this

<sup>14</sup> Id. at 35-36.

<sup>15</sup> Id. at 2-15.

<sup>16</sup> *Chua v. Metropolitan Bank and Trust Co.*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

<sup>17</sup> *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 428.

<sup>18</sup> *Dy v. Yu*, G.R. No. 202632, July 8, 2015, 762 SCRA 357, 376.

<sup>19</sup> *Intramuros Administration v. Contacto*, G.R. No. 152576, May 5, 2003, 402 SCRA 581, 586.

case, all of the elements of *litis pendentia* are present.

Here, the similarity in the identity of the parties was readily apparent as both parties were the same litigants in Civil Case No. 70926-PSG (recovery of possession) and Civil Case No. 31, 586-06 (rescission of contract and breach of warranty).

As for the second element, the respondents have asserted the same rights and reliefs in both civil cases. The Court had the occasion to discuss in *Yap. vs. Chua*<sup>20</sup> the test to determine the identity in causes of action, thus:

The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies.<sup>21</sup>

In Civil Case No. 70926-PSG, the petitioners asserted its right to recover possession of the unit after cancellation of the deed of conditional sale. The respondents countered that the petitioners has no cause of action due to breach of warranty as it was made to suffer the amount of ₱1,125,000.00 for a defective unit, stating thus:

9. Granting for the sake of argument that defendants are real party in interest, plaintiff has no cause of action due to breach of warranty. This for the sale of MUTOH PJ-1634 NX Grand Format Inkjet Printer for outdoor applications with Serial Number DK6E0000009 is subject of warranty as contained in warranty issued by plaintiff through Ms. Virgie Concepcion, Administrative Manager of Plaintiff x x x

x x x x

11. It is totally false that defendants and/or Minds View Graphics Ads refused to turn over the subject printer, the truth being that Cesar Manhilot as Manager of Minds View Graphics Ads filed a complaint before Department of Trade and Industry for the return of the unit and reimbursement of amortization made amounting to P1,125,000.00. xxx

x x x x

<sup>20</sup> *Yap v. Chua*, supra note 17.

<sup>21</sup> *Id.* at 430.

13. Plaintiff through its officer acted in bad faith in filing this unreasonable suit and delivery of defective printer. It is poised to appropriate the amount of P1,125,000.00 for itself to the prejudiced (sic) of Minds View Graphics Ads. A separate complaint was filed in Davao City for the recovery of P1,125,000.00 by Minds View Graphic Ads.<sup>22</sup>

The respondents thereafter filed Civil Case No. 31, 586-06 where it asserted its right of reimbursement for the amount of P1,125,000.00 representing the amortizations paid prior to the cancellation of the deed of conditional sale. It then presented the same set of evidence that it submitted in Civil Case No. 70926-PSG. Accordingly, the respondents violated the rule against splitting of a cause of action by opting to file a separate case similar to what should have been pleaded in a counterclaim. Such prohibition is a matter of policy "to prevent repeated litigation between the same parties in regard to the same subject of controversy; to protect defendant from unnecessary vexation; and to avoid the costs and expenses incident to numerous suits."<sup>23</sup>

Finally, the similarity in both cases is such that any decision rendered in Civil Case No. 70926-PSG will, regardless of the winning party, would constitute *res judicata* in Civil Case No. 31, 586-06.

**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the June 29, 2010 decision and February 17, 2011 resolution in CA-G.R. CV No. 01621-MIN; **REINSTATES** the order issued on August 30, 2007 in Civil Case No. 31, 586-06; and **ORDERS** the respondents to pay the costs of suit. *Carandang, J., on official leave.*

**SO ORDERED."**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court

78-A

<sup>22</sup> Rollo, pp. 52-57.

<sup>23</sup> *Intramuros Administration v. Contacto*, supra note 19, at 587.

CORTEL LAW OFFICE  
Counsel for Petitioners  
Suite 1015, 10 F Cityland  
Condominium 10 Tower 1  
Ayala Avenue corner H.V. dela Costa Street  
1200 Makati City


Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M. No.  
12-7-1-SC)

Judgment Division (x)  
Supreme Court  
e

Court of Appeals  
9000 Cagayan de Oro City  
(CA -G.R. CV No. 01621-MIN)

PASQUIL SEVILLA MAGULTA &  
GARDE LAW OFFICES  
Counsel for Respondent  
2<sup>nd</sup> Floor, Uncle Mark Building  
Quimpo Blvd., Ecoland  
8000 Davao City

The Presiding Judge  
Regional Trial Court, Branch 11  
8000 Davao City  
(Civil Case No. 31, 586-06)



UR

78-A

R117