



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

P. L. UY REALTY CORPORATION,
Petitioner,

G.R. No. 166162

Present:

- versus -

ALS MANAGEMENT AND
DEVELOPMENT CORPORATION
and ANTONIO K. LITONJUA,
Respondents.

VELASCO, JR., J., Chairperson,
LEONARDO-DE CASTRO,
PERALTA,
ABAD, and
MENDOZA, JJ.

Pronulgated.

24 October 2012

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RESOLUTION

VELASCO, JR., J.:

For consideration of the Court is a Petition for Review on Certiorari dated February 2005 filed under Rule 45 by petitioner P. L. Uy Realty Corporation (PLU). In the petition, PLU seeks the reversal of the Decision dated August 21, 2002¹ and Resolution dated December 22, 2004² issued by the Court of Appeals (CA) in CA-G.R. CV No. 41377 entitled *P. L. Uy Realty Corporation v. ALS³ Management and Development Corporation, et al.* The CA Decision affirmed the Decision dated November 17, 1993⁴ of the Regional Trial Court of Pasig City, Branch 156, in Civil Case No. 60171 which dismissed, on the ground of prematurity, the complaint filed by PLU

¹ Acting member per Special Order No. 1343 dated October 9, 2012.

² *Rollo*, pp. 7-34. Penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Eloy R. Bello, Jr. and Rebecca De Guia-Salvador.

³ *Id.* at 36-41.

⁴ This should be "ALS" as shown in the *Articles of Incorporation of the ALS Management and Development Corporation* dated February 3, 1976 marked as Exhibit "11" (records, pp. 80-84), showing Antonio K. Litonjua as an incorporator, board of director and majority stockholder.

⁵ *Rollo*, pp. 116-133.

for foreclosure of mortgage against ALS Management and Development Corporation (ALS) and Antonio S. Litonjua.⁵

The antecedent facts of the case are as follows:

On September 3, 1980, PLU, as vendor, and ALS, as vendee, executed a Deed of Absolute Sale with Mortgage⁶ covering a parcel of land, registered under Transfer Certificate of Title (TCT) No. 16721, in the name of petitioner and located at F. Blumentritt Street, Mandaluyong, Metro Manila. The purchase price for the land was set at PhP 8,166,705 payable, as follows:

a. Upon execution of the Contract		- P 500,000.00
b. Within 100 days thereafter, a downpayment equivalent to 24% (P1,960,000.00) of the principal amount less the advance of P500,000.00		- 1,460,009.20
c. The balance of P6,206,695.80 together with interest of 12% per annum (estimated interest included) on the diminishing balance shall be payable over a period of four (4) years on or before the month and day of the first downpayment as follows:		
2 nd Payment (24%)	P1,960,009.20	
Interest	744,803.49	2,704,812.69
3 rd Payment (24%)	1,960,009.20	
Interest	509,602.39	2,469,611.59
4 th Payment (24%)	1,960,009.20	
Interest	274,401.28	2,234,410.48
5 th Payment (24%)	326,668.20	
Interest	19,600.09	346,268.29 ⁷

Notably, the parties stipulated in paragraph 4.a of the Deed of Absolute Sale with Mortgage on the eviction of informal settlers, as follows:

4. a. It is understood that the VENDOR shall have the property clear of any existing occupants/squatters, the removal of which shall be for the sole expenses & responsibilities of the VENDOR & that the VENDEE

⁵ Id. at 116.
⁶ Records, pp. 7-10.
⁷ Id. at 8.

is authorized to withhold payment of the 1st 24% installment unless the above-undertaking is done and completed to the satisfaction of the VENDEE;⁸

Section 6 of the deed, on the other hand, provided that “realty taxes during the validity of this mortgage, shall be for the account of the VENDEE [ALS].”⁹

Thereafter, the parties entered into an Agreement dated December 23, 1980,¹⁰ paragraph 3 of which reads:

3. That all accruals of interest as provided for in paragraph 2-c of the Deed of Sale With Mortgage will be deferred and the subsequent payments of installments will correspondingly [sic] extended to the date the occupants/squatters will vacate the subject property.¹¹

The succeeding paragraph 4 provided that in the event the informal settlers do not leave the property, PLU would reimburse ALS the following amounts:

4. That in the event the occupants/squatters will refuse to vacate the premises despite the amicable payments being offered by the FIRST PARTY (PLU) and paid by the SECOND PARTY (ALS) for the account of the FIRST PARTY, the following amount [sic] will be refunded by the FIRST PARTY to the SECOND PARTY:

- a. All payments made, including the downpayment
- b. All costs of temporary/permanent improvements introduced by the SECOND PARTY in the subject property
- c. All damages suffered by the SECOND PARTY due to the refusal of the occupants/squatters to vacate the premises.¹²

On January 26, 1981, TCT No. 16721 was canceled and a new one, TCT No. 26048, issued in the name of ALS.¹³

⁸ Id.

⁹ Id. at 9.

¹⁰ Id. at 355-358.

¹¹ Id. at 356.

¹² Id. at 356-357.

¹³ Id. at 362.

Subsequently, the parties executed a Partial Release of Mortgage dated April 3, 1981¹⁴ attesting to the payment by ALS of the first installment indicated in the underlying deed. The relevant portion of the Partial Release of Mortgage reads:

1. Upon the execution of this document, the SECOND PARTY shall pay the net sum of THREE HUNDRED NINETY FIVE THOUSAND PESOS (P395,000.00) after deducting expenses, covered by UCPB Check No. 078993 dated April 2, 1981 to complete the full payment of the first 24% installment.

2. The FIRST PARTY hereby executes a partial release of the mortgage to the extent of TWENTY THOUSAND SQUARE METERS (20,000 sq.m.) in consideration of the advance payment which would now amount to a total of P1,960,009.20, of a portion of the said property indicated in the attached subdivision plan herewith x x x.¹⁵

ALS, however, failed to pay the 2nd payment despite demands.

Thus, on August 25, 1982, PLU filed a Complaint¹⁶ against ALS for Foreclosure of Mortgage and Annulment of Documents. The case was initially raffled to the Court of First Instance (CFI) of Rizal, but eventually re-raffled to the Regional Trial Court, Branch 137 in Makati City (Makati RTC) thereat docketed as Civil Case No. 47438 entitled *PLU Realty Corporation v. ALS (or ASL) Management and Development Corporation*.¹⁷ In the complaint, PLU alleged having had entered into an oral agreement with ALS whereby the latter “[agreed to] take over the task of ejecting the squatters/occupants from the property covered by TCT No. 26048 issued in its name,”¹⁸ adding that, through the efforts of ALS, the property was already 90% clear of informal settlers.¹⁹ Notably, PLU’s prayer for relief states:

WHEREFORE, plaintiff respectfully prays that judgment be rendered:

(1) Declaring null and void the documents attached to, and made an integral part of this complaint as Annexes “D” and “G”;

¹⁴ Id. at 359-360.

¹⁵ Id. at 359.

¹⁶ Id. at 361-372.

¹⁷ Id. at 67.

¹⁸ Id.

¹⁹ Id. at 363.

(2) Sentencing the defendant to pay the plaintiff the sum of Six Million Two Hundred Six Thousand Six hundred Ninety-Five Pesos & 60/100 (P6,206,695.80), with interest thereon as provided in sub-paragraph (c), paragraph 2 of the Deed of Sale with Mortgage and paragraph 6 of the same Deed, plus interests at the legal rate from the date of filing of this complaint;

(3) Sentencing the defendant to pay the plaintiff the actual damages and attorney's fees it has suffered, as above alleged, in the total sum of Four Hundred Fifty Thousand Pesos (P450,000.00);

(4) Providing that, in the event defendant refuses or fails to pay all the above-mentioned amounts after the decision of this Hon. Court has become final and executory, the corresponding order is issued for the sale, in the corresponding Foreclosure sale of the mortgaged property described in the Deed of Sale with Mortgage, to satisfy the judgment rendered by this Hon. Court, plus costs of suit.

Plaintiff prays for such further reliefs as this Hon. Court may deem just and proper in the premises.²⁰

On May 9, 1986, the Makati RTC rendered a Decision²¹ ruling that the obligation of PLU to clear the property of informal settlers was superseded by an oral agreement between the parties whereby ALS assumed the responsibility of ejecting said informal settlers. The Makati RTC, however, declared that the removal of the informal settlers on the property is still a subsisting and valid condition.²² In this regard, the trial court, citing a CA case entitled *Jacinto v. Chua Leng* (45 O.G. 2915), ruled:

In the case at bar, the fulfillment of the conditional obligation to pay the subsequent installments does not depend upon the sole will or exclusive will of the defendant-buyer. In the first place, although the defendant-buyer has shown an apparent lack of interest in compelling the squatters to vacate the premises, as it agreed to do, there is nothing either in the contract or in law that would bar the plaintiff-seller from taking the necessary action to eject the squatters and thus compel the defendant-buyer to pay the balance of the purchase price. In the second place, should the squatters vacate the premises, for reasons of convenience or otherwise, and despite defendant's lack of diligence, the latter's obligation to pay the balance of the purchase price would arise unavoidably and inevitably. x x x Moreover, considering that the squatters' right of possession to the premises is involved in Civil Case No. 40078 of this Court, defendant's obligation to pay the balance of the purchase price would necessarily be

²⁰ Id. at 370-371.

²¹ Id. at 67-74

²² Id. at 73.

dependent upon a final judgment of the Court ordering the squatters to vacate the premises.

The trial court further ruled that because informal settlers still occupied 28% of the property, the condition, as to their eviction, had not yet been complied with.²³ For this reason, the Makati RTC found the obligation of ALS to pay the balance of the purchase price has not yet fallen due and demandable; thus, it dismissed the case for being premature. The dispositive portion of the Makati RTC Decision reads:

WHEREFORE, judgment is hereby rendered dismissing the instant action for foreclosure of mortgage, as the same is premature. Likewise the counterclaim is hereby ordered dismissed, for lack of sufficient merit. No pronouncement as to costs.

SO ORDERED.²⁴

Therefrom, both parties appealed to the CA which eventually affirmed the ruling of the trial court in a Decision dated August 30, 1989²⁵ in CA-G.R. CV No. 12663 entitled *PLU Realty Corporation v. ALS (or ASL) Management and Development Corporation*. The dispositive portion of the Decision states:

WHEREFORE, premises considered, the decision of the trial court is AFFIRMED in toto.

No costs.

SO ORDERED.²⁶

ALS appealed the case to this Court primarily questioning the finding of the Makati RTC that it had assumed the responsibility of ejecting the informal settlers on the property. On February 7, 1990, in G.R. No. 91656, entitled *ALS Management and Development Corporation v. Court of Appeals and PLU Realty*, the Court issued a Resolution²⁷ affirming the

²³ Id.

²⁴ Id. at 74.

²⁵ Id. at 89-100.

²⁶ Id. at 100.

²⁷ Id.

rulings of the CA and the Makati RTC. The resolution became final and executory on February 7, 1990.²⁸

Sometime thereafter, PLU again filed a Complaint dated November 12, 1990²⁹ against ALS for Judicial Foreclosure of Real Estate Mortgage under Rule 68, before the RTC, Branch 156 in Pasig City (Pasig RTC), docketed as Civil Case No. 60221 and entitled *P. L. Uy Realty Corporation v. ASL Management and Development Corporation and Antonio S. Litonjua*. In the complaint, PLU claimed that ALS had not yet completed the agreed 1st payment obligation despite numerous demands. The complaint's prayer reads:

WHEREFORE, it is most respectfully prayed that after hearing judgment be rendered directing the defendants to pay within ninety (90) days from receipt of an order the following amount:

1. The outstanding balance of the purchase price amounting to P6,206,695.80 plus 12% interest per annum from January, 1981 until full payment thereof has been made;
2. The sum equivalent to 10% of the total outstanding obligations as and for attorney's fee;
3. The sum of P100,000.00 as and for moral damages; and,
4. The sum of P50,000.00 as and for exemplary damages, plus costs;

and in case of default to order the sale of the properties to satisfy the aforestated obligations pursuant to the provisions of Rule 68 of the Revised Rules of Court.

Plaintiff also prays for such other just and equitable reliefs in the premises.

In defense, ALS claims that the installment payments for the balance of the purchase price of the property are not yet due and demandable, as the removal of the informal settlers, a condition precedent for such payments to be demandable, is still to be completed. ALS further avers that respondent Antonio Litonjua (Litonjua) cannot be made personally liable under the Deed of Absolute Sale with Mortgage, not being a party thereto and as no ground exists for piercing the veil of corporate fiction to make Litonjua, a corporate officer of ALS, liable. By way of counterclaim, ALS alleged that

²⁸ Id. at 87.

²⁹ Id. at 1-4

because there were still informal settlers on the property, PLU should be directed to reimburse ALS the payments that it already made, the cost of improvements introduced by ALS on the property and for other damages.

During the course of the trial, the court conducted an ocular inspection and found 1 ½ hectares of the 5.4 hectare property still being occupied by informal settlers.³⁰

In a Decision dated November 17, 1993, the Pasig RTC dismissed the case for being premature, the dispositive portion of which reads:

WHEREFORE, premises considered, the present Complaint is hereby ordered DISMISSED for being premature.

On the counterclaim, the plaintiff is hereby ordered to reimburse the defendant-corporation the amount of P131,331.20 representing the real estate taxes paid by the latter with 12% interest thereon from the time of their actual payments to the Government until the same are fully reimbursed.

The other counterclaims are hereby ordered DISMISSED for want of sufficient merits.

SO ORDERED.³¹

Just like the Makati RTC in Civil Case No. 47438, the Pasig RTC found that the payment of the installments has not yet become due and demandable as the suspensive condition, the ejection of the informal settlers on the property, has not yet occurred.³² Further, even if ALS has taken up the obligation to eject the informal settlers, its inaction cannot be deemed as constructive fulfillment of the suspensive condition. The court reasoned that it is only when the debtor prevents the fulfillment of the condition that constructive fulfillment can be concluded, citing Article 1186 of the Civil Code. And inasmuch as PLU has failed to demand the removal of the informal settlers from the property, so the court noted citing Art. 1169 of the Civil Code, ALS cannot be deemed as in default vis-à-vis its obligation to

³⁰ *Rollo*, p. 29.

³¹ *Id.* at 132-133.

³² *Id.* at 129.

remove the informal settlers.³³ Furthermore, the trial court, citing Art. 1167 of the Civil Code, ruled that the foreclosure of the mortgage is not the proper remedy, and that PLU should have caused the ejectment of the informal settlers.³⁴ Also, the court found no reason to render Litonjua personally liable for the transaction of ALS as there was no ground to pierce the veil of corporate fiction.³⁵

From such Decision, PLU appealed to the CA which rendered the assailed Decision affirming that of the Pasig RTC. PLU moved for a reconsideration of the CA Decision but was denied in the assailed Resolution.

Hence, the instant petition.

The instant petition must be dismissed.

Section 1, Rule 9 of the Rules of Court provides:

Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, **or that the action is barred by a prior judgment** or by statute of limitations, **the court shall dismiss the claim.** (Emphasis supplied)

Under this provision of law, the Court may *motu proprio* dismiss a case when any of the four (4) grounds referred to therein is present. These are: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action. Thus, in *Heirs of Domingo Valientes v. Ramas*,³⁶ the Court ruled:

³³ Id. at 130; Art. 1169 reads: Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x

³⁴ Id. at 130-131.

³⁵ Id. at 132.

³⁶ G.R. No. 157852, December 15, 2010, 638 SCRA 444, 451.

Secondly, and more importantly, Section 1, Rule 9 of the Rules of Court provides:

Section 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

The second sentence of this provision does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases *motu proprio* on any of the enumerated grounds – (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription – provided that the ground for dismissal is apparent from the pleadings or the evidence on record.

Correlatively, Secs. 47(b) and (c) of Rule 39 provides for the two (2) concepts of *res judicata*: bar by prior judgment and conclusiveness of judgment, respectively. The provisions state:

Section 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The Court, in *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*,³⁷ distinguished the two (2) concepts in this wise:

Res judicata embraces two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c).

³⁷ G.R. No. 167050, June 1, 2011, 650 SCRA 50, 56-57.

There is “bar by prior judgment” when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as “conclusiveness of judgment.” Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

In the same *Social Security Commission* case, the Court enumerated the elements of *res judicata*, to wit:

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. **Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a “bar by prior judgment” would apply.** If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as “conclusiveness of judgment” applies. (Emphasis supplied.)

All the elements of *res judicata*, as a “bar by prior judgment,” are present in the instant case. The previous complaint for foreclosure of mortgage was dismissed by the trial court for being premature in Civil Case No. 47438. The dismissal action, when eventually elevated to this Court in G.R. No. 91656, was affirmed and the affirmatory resolution of the Court becoming final and executory on February 7, 1990. Further, the element of identity of parties is considered existing even though Litonjua was only

impleaded in Civil Case No. 60221 and not in Civil Case No. 47438. Absolute identity of parties is not required for *res judicata* to apply; substantial identity is sufficient. The Court articulated this principle was raised in *Cruz v. Court of Appeals*³⁸ in this wise:

The principle of *res judicata* may not be evaded by the mere expedient of including an additional party to the first and second action. Only substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case.

x x x x

x x x Such identity of interest is sufficient to make them privy-in-law, thereby satisfying the requisite of substantial identity of parties.

Plainly, the two (2) cases involve the very same parties, the same property and the same cause of action arising from the violation of the terms of one and the same deed of absolute sale with mortgage. In fact, PLU prayed substantially the same relief in both complaints. There is no reason not to apply this principle to the instant controversy.

Clearly, the instant complaint must be dismissed.

On a final note, it would be relevant to note that Art. 1306 of the Civil Code guarantees the freedom of parties to stipulate the terms of their contract provided that they are not contrary to law, morals, good customs, public order, or public policy. Thus, when the provisions of a contract are valid, the parties are bound by such terms under the principle that a contract is the law between the parties.

Here, both parties knew for a fact that the property subject of their contract was occupied by informal settlers, whose eviction would entail court actions that in turn, would require some amount of time. They also knew that the length of time that would take to conclude such court actions

³⁸ G.R. No. 164797, February 13, 2006, 482 SCRA 379, 392-393.

was not within their power to determine. Despite such knowledge, both parties still agreed to the stipulation that the payment of the balance of the purchase price would be deferred until the informal settlers are ejected. There was never any allegation that PLU was coerced into signing the Deed of Sale with Mortgage or that its consent was in any way vitiated. PLU was free to accept or decline such contractual provision. Thus, PLU cannot now be allowed to renege on its agreement. Justice J. B. L. Reyes, in *Gregorio Araneta, Inc. v. Phil. Sugar Estate Development Co., Inc.*³⁹ a case void against a similar factual milieu, stated the following apt observation:

In this connection, it is to be borne in mind that the contract shows that the parties were fully aware that the land described therein was occupied by squatters, because the fact is expressly mentioned therein (Rec. on Appeal, Petitioner's Appendix B, pp. 12-13). As the parties must have known that they could not take the law into their own hands, but must resort to legal processes in evicting the squatters, they must have realized that the duration of the suits to be brought would not be under their control nor could the same be determined in advance. The conclusion is thus forced that the parties must have intended to defer the performance of the obligations under the contract until the squatters were duly evicted, as contended by the petitioner Gregorio Araneta, Inc. (Emphasis supplied.)

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. No costs.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

³⁹ No. L-22358, May 31, 1967, 20 SCRA 330, 336.

WE CONCUR:

Teresita J. Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Roberto A. Abad
ROBERTO A. ABAD
Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Presbitero J. Velasco, Jr.
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Bereng
MARIA LOURDES P. A. BERENG
Chief Justice