



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

UNICAPITAL, INC., UNICAPITAL REALTY, INC., and JAIME J. MARTIREZ,

Petitioners,

- versus -

RAFAEL JOSE CONSING, JR. and
THE PRESIDING JUDGE OF THE
REGIONAL TRIAL COURT OF
PASIG CITY, BRANCH 168,

Respondents.

X-----X

RAFAEL JOSE CONSING, JR.,

G.R. No. 192073

Petitioner,

- versus -

HON. MARISSA MACARAIG-GUILLEN, in her capacity as the
Presiding Judge of the Regional Trial
Court of Makati City, Branch 60 and
UNICAPITAL, INC.,

Respondents.

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

SEP 11 2013

X-----X

DECISION

PERLAS-BERNABE, J.:

Before the Court are consolidated petitions for review on *certiorari*¹ assailing separate issuances of the Court of Appeals (CA) as follows:

¹ Rollo (G.R. Nos. 175277 & 175285), pp. 35-76; rollo (G.R. No. 192073), pp. 10-34.

(a) The petitions in G.R. Nos. 175277 and 175285 filed by Unicapital, Inc., (Unicapital), Unicapital Realty, Inc. (URI), and Unicapital Director and Treasurer Jaime J. Martirez (Martirez) assail the CA's Joint Decision² dated October 20, 2005 and Resolution³ dated October 25, 2006 in CA-G.R. SP Nos. 64019 and 64451 which affirmed the Resolution⁴ dated September 14, 1999 and Order⁵ dated February 15, 2001 of the Regional Trial Court (RTC) of Pasig City, Branch 68 (RTC-Pasig City) in SCA No. 1759, upholding the denial of their motion to dismiss; and

(b) The petition in G.R. No. 192073 filed by Rafael Jose Consing, Jr. (Consing, Jr.) assails the CA's Decision⁶ dated September 30, 2009 and Resolution⁷ dated April 28, 2010 in CA-G.R. SP No. 101355 which affirmed the Orders dated July 16, 2007⁸ and September 4, 2007⁹ of the RTC of Makati City, Branch 60 (RTC-Makati City) in Civil Case No. 99-1418, upholding the denial of his motion for consolidation.

The Facts

In 1997, Consing, Jr., an investment banker, and his mother, Cecilia Dela Cruz (Dela Cruz), obtained an ₱18,000,000.00 loan from Unicapital, ₱12,000,000.00 of which was acquired on July 24, 1997 and the remaining ₱6,000,000.00 on August 1, 1997. The said loan was secured by Promissory Notes¹⁰ and a Real Estate Mortgage¹¹ over a 42,443 square meter-parcel of land located at Imus, Cavite, registered in the name of Dela Cruz as per Transfer Certificate of Title (TCT) No. T-687599 (subject property).¹² Prior to these transactions, Plus Builders, Inc. (PBI), a real estate company, was already interested to develop the subject property into a residential subdivision.¹³ In this regard, PBI entered into a joint venture agreement with Unicapital, through its real estate development arm, URI. In view of the foregoing, the loan and mortgage over the subject property was later on modified into an Option to Buy Real Property¹⁴ and, after further

² *Rollo* (G.R. Nos. 175277 & 175285), pp. 9-29. Penned by Associate Justice Ruben T. Reyes (now retired member of the Supreme Court), with Associate Justices Aurora Santiago Lagman and Sesinando E. Villon, concurring.

³ *Id.* at 31-32.

⁴ *Id.* at 191-193. Penned by Judge Santiago G. Estrella.

⁵ *Id.* at 279-281. Penned by Acting Presiding Judge Florito S. Macalino.

⁶ *Rollo* (G.R. No. 192073), pp. 38-49. Penned by Associate Justice Isaias Dicdican, with Associate Justices Remedios A. Salazar-Fernando and Romeo F. Barza, concurring.

⁷ *Id.* at 70-71.

⁸ *Id.* at 160-162. Penned by Judge Marissa Macaraig-Guillen.

⁹ *Id.* at 177-178.

¹⁰ *Id.* at 88-89.

¹¹ *Id.* at 90-93.

¹² *Id.* at 357-358.

¹³ *Id.* at 83.

¹⁴ *Id.* at 84-86.

negotiations, Dela Cruz decided to sell the same to Unicapital and PBI. For this purpose, Dela Cruz appointed Consing, Jr. as her attorney-in-fact.¹⁵

Eventually, Unicapital, through URI, purchased one-half of the subject property for a consideration of ₱21,221,500.00 (against which Dela Cruz's outstanding loan obligations were first offset), while PBI bought the remaining half for the price of ₱21,047,000.00.¹⁶ In this relation, Dela Cruz caused TCT No. T-687599 to be divided into three separate titles as follows: (a) TCT No. T-851861 for URI;¹⁷ (b) TCT No. T-851862 for PBI;¹⁸ and (c) TCT No. T-851863 which was designated as a road lot.¹⁹ However, even before URI and PBI were able to have the titles transferred to their names, Juanito Tan Teng (Teng) and Po Willie Yu (Yu) informed Unicapital that they are the lawful owners of the subject property as evidenced by TCT No. T-114708;²⁰ that they did not sell the subject property; and that Dela Cruz's title, *i.e.*, TCT No. T-687599, thereto was a mere forgery.²¹ Prompted by Teng and Yu's assertions, PBI conducted further investigations on the subject property which later revealed that Dela Cruz's title was actually of dubious origin. Based on this finding, PBI and Unicapital sent separate demand letters²² to Dela Cruz and Consing, Jr., seeking the return of the purchase price they had paid for the subject property.

From the above-stated incidents stemmed the present controversies as detailed hereunder.

The Proceedings Antecedent to G.R. Nos. 175277 & 175285

On May 3, 1999, Consing, Jr. filed a complaint, denominated as a Complex Action for Declaratory Relief²³ and later amended to Complex Action for Injunctive Relief²⁴ (Consing, Jr.'s complaint) before the RTC-Pasig City against Unicapital, URI, PBI, Martinez, PBI General Manager Mariano Martinez (Martinez), Dela Cruz and Does 1-20, docketed as **SCA No. 1759**. In his complaint, Consing, Jr. claimed that the incessant demands/recovery efforts made upon him by Unicapital and PBI to return to them the purchase price they had paid for the subject property constituted harassment and oppression which severely affected his personal and professional life.²⁵ He also averred that he was coerced to commit a violation

¹⁵ Id. at 87.

¹⁶ Id. at 42.

¹⁷ Id. at 345-346.

¹⁸ Id. at. 347-348.

¹⁹ Id. at 349-350.

²⁰ Id. at 354-356.

²¹ Id. at 359-360. See Letter dated April 21, 1999.

²² *Rollo* (G.R. Nos. 175277 & 175285), pp. 131-132 (Dated April 27, 1999 of PBI); and *rollo* (G.R. No. 192073), pp. 112-113 (Dated April 26, 1999 of Unicapital).

²³ *Rollo* (G.R. Nos. 175277 & 175285), pp. 114-123.

²⁴ Id. at 149-157. Dated June 16, 1999.

²⁵ Id. at 153.

of Batas Pambansa Blg. 22²⁶ as Unicapital and PBI, over threats of filing a case against him, kept on forcing him to issue a post-dated check in the amount sought to be recovered, notwithstanding their knowledge that he had no funds for the same.²⁷ He further alleged that Unicapital and URI required him to sign blank deeds of sale and transfers without cancelling the old ones in violation of the laws on land registration and real estate development.²⁸ Likewise, Consing, Jr. added that Unicapital and PBI's representatives were "speaking of him in a manner that [was] inappropriate and libelous,"²⁹ and that some John Does "deliberately engaged in a fraudulent scheme to compromise [Consing, Jr.'s] honor, integrity and fortune x x x [consisting of] falsifying or causing to be falsified, or attempting to present as falsified certain transfers of Land Titles and Deeds for profit,"³⁰ classifying the foregoing as *ultra vires* acts which should warrant sanctions under the corporation law, Revised Securities Act and related laws.³¹ Accordingly, Consing, Jr. prayed that: (a) he be declared as a mere agent of Dela Cruz, and as such, devoid of any obligation to Unicapital, URI, and PBI for the transactions entered into concerning the subject property; (b) Unicapital, URI, and PBI be enjoined from harassing or coercing him, and from speaking about him in a derogatory fashion; and (c) Unicapital, URI, and PBI pay him actual and consequential damages in the amount of ₱2,000,000.00, moral damages of at least ₱1,000,000.00, exemplary damages of ₱1,000,000.00, all per month, reckoned from May 1, 1999 and until the controversy is resolved, and attorney's fees and costs of suit.³²

For their part, Unicapital, URI, and Martirez (Unicapital, et al.) filed separate Motions to Dismiss³³ Consing, Jr.'s complaint (Unicapital, et al.'s motion to dismiss) on the ground of failure to state a cause of action, considering that: (a) no document was attached against which Consing, Jr. supposedly derived his right and against which his rights may be ascertained; (b) the demands to pay against Consing, Jr. and for him to tender post-dated checks to cover the amount due were well within the rights of Unicapital as an unpaid creditor, as Consing, Jr. had already admitted his dealings with them; (c) the utterances purportedly constituting libel were not set out in the complaint; and (d) the laws supposedly violated were not properly identified. Moreover, Unicapital, et al. posited that the RTC-Pasig City did not acquire jurisdiction over the case given that Consing, Jr. failed to pay the proper amount of docket fees. In the same vein, they maintained that the RTC-Pasig City had no jurisdiction over their supposed violations of the Corporation Code and Revised Securities Act, which, discounting its merits, should have been supposedly lodged with the Securities and

²⁶ "AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES, otherwise known as "The Anti-Bouncing Check Law."

²⁷ *Rollo* (G.R. Nos. 175277 & 175285), pp. 153-154.

²⁸ *Id.* at 154-155.

²⁹ *Id.* at 120.

³⁰ *Id.*

³¹ *Ibid.*

³² *Id.* at 121-122.

³³ *Id.* at 124-127 (Dated May 24, 1999); and *id.* at 159-166 (Dated August 23, 1999).

Exchange Commission. Finally, they pointed out that Consing, Jr.'s complaint suffers from a defective verification and, thus, dismissible.³⁴

Similar to Unicapital et al.'s course of action, PBI and its General Manager, Martinez (Unicapital and PBI, et al.), sought the dismissal of Consing, Jr.'s complaint on the ground that it does not state a cause of action. They also denied having singled out Consing, Jr. because their collection efforts were directed at both Consing, Jr. and Dela Cruz, which should be deemed as valid and, therefore, should not be restrained.³⁵

On September 14, 1999, the RTC-Pasig City issued a Resolution³⁶ denying the abovementioned motions to dismiss, holding that Consing, Jr.'s complaint sufficiently stated a cause of action for tort and damages pursuant to Article 19 of the Civil Code. It ruled that where there is abusive behavior, a complainant, like Consing, Jr., has the right to seek refuge from the courts. It also noted that the elements of libel in a criminal case are not the same as those for a civil action founded on the provisions of the Civil Code, and therefore, necessitates a different treatment. It equally refused to dismiss the action on the ground of non-payment of docket fees, despite Consing, Jr.'s escalated claims for damages therein, as jurisdiction was already vested in it upon the filing of the original complaint. Moreover, it resolved to apply the liberal construction rule as regards the subject complaint's verification and certification, despite its improper wording, considering further that such defect was not raised at the first opportunity. Consequently, it ordered Unicapital and PBI, et al. to file their Answer and, in addition, to submit "any Comment or Reaction within five (5) days from receipt hereof on the allegations of [Consing, Jr.] in [his] rejoinder of September 9, 1999 regarding the supposed filing of an identical case in Makati City,"³⁷ i.e., Civil Case No. 99-1418. Unperturbed, Unicapital and PBI, et al. moved for reconsideration therefrom which was, however, denied by the RTC-Pasig City in an Order³⁸ dated February 15, 2001 for lack of merit. Aggrieved, they elevated the denial of their motions to dismiss before the CA via a petition for *certiorari* and prohibition,³⁹ docketed as **CA-G.R. SP Nos. 64019 and 64451**.

On October 20, 2005, the CA rendered a Joint Decision⁴⁰ holding that no grave abuse of discretion was committed by the RTC-Pasig City in refusing to dismiss Consing, Jr.'s complaint. At the outset, it ruled that while the payment of the prescribed docket fee is a jurisdictional requirement, its non-payment will not automatically cause the dismissal of the case. In this regard, it considered that should there be any deficiency in the payment of

³⁴ Id. at 187-188. See Reply dated September 7, 1999.

³⁵ Id. at 128-130 (Dated May 26, 1999); id. at 167-168 (Dated August 27, 1999).

³⁶ Id. at 191-193. See also id. at 86.

³⁷ Id. at 193.

³⁸ Id. at 279-281.

³⁹ Id. at 282-315. Dated March 28, 2001.

⁴⁰ Id. at 83-103.

such fees, the same shall constitute a lien on the judgment award.⁴¹ It also refused to dismiss the complaint for lack of proper verification upon a finding that the copy of the amended complaint submitted to the RTC-Pasig City was properly notarized.⁴² Moreover, it upheld the order of the RTC-Pasig City for Unicapital and PBI, et al. to submit their comment due to the alleged existence of a similar case filed before the RTC-Makati City.⁴³

Anent the substantive issues of the case, the CA concurred with the RTC-Pasig City that Consing Jr.'s complaint states a cause of action. It found that Unicapital and PBI, et al.'s purportedly abusive manner in enforcing their claims against Consing, Jr. was properly constitutive of a cause of action as the same, if sufficiently proven, would have subjected him to "defamation of his name in business circles, the threats and coercion against him to reimburse the purchase price, fraud and falsification and breach of fiduciary obligation." It also found that the fact that Consing Jr.'s complaint contains "nebulous" allegations will not warrant its dismissal as any vagueness therein can be clarified through a motion for a bill of particulars."⁴⁴ Furthermore, it noted that Consing, Jr. does not seek to recover his claims against any particular provision of the corporation code or the securities act but against the actions of Unicapital and PBI, et al.; hence, Consing, Jr.'s complaint was principally one for damages over which the RTC has jurisdiction, and, in turn, there lies no misjoinder of causes of action.⁴⁵

Dissatisfied, only Unicapital, et al. sought reconsideration therefrom but the same was denied by the CA in a Resolution⁴⁶ dated October 25, 2006. Hence, the present petitions for review on *certiorari* in **G.R. Nos. 175277 and 175285**.

The Proceedings Antecedent to G.R. No. 192073

On the other hand, on August 4, 1999, Unicapital filed a complaint⁴⁷ for sum of money with damages against Consing, Jr. and Dela Cruz before the RTC-Makati City, docketed as **Civil Case No. 99-1418**, seeking to recover (a) the amount of ₱42,195,397.16, representing the value of their indebtedness based on the Promissory Notes (subject promissory notes) plus interests; (b) ₱5,000,000.00 as exemplary damages; (c) attorney's fees; and (d) costs of suit.⁴⁸

⁴¹ Id. at 92-95.

⁴² Id. at 100-101.

⁴³ Id. at 101-102.

⁴⁴ Id. at 98-99.

⁴⁵ Id. at 99-100.

⁴⁶ Id. at 105-106.

⁴⁷ *Rollo* (G.R. No. 192073), pp. 124-135. Dated July 28, 1999.

⁴⁸ Id. at 133.

PBI also filed a complaint for damages and attachment against Consing, Jr. and Dela Cruz before the RTC of Manila, Branch 12, docketed as Civil Case No. 99-95381, also predicated on the same set of facts as above narrated.⁴⁹ In its complaint, PBI prayed that it be allowed to recover the following: (a) ₱13,369,641.79, representing the total amount of installment payments made as actual damages plus interests; (b) ₱200,000.00 as exemplary damages; (c) ₱200,000.00 as moral damages; (d) attorney's fees; and (e) costs of suit.⁵⁰ **Civil Case No. 99-95381** was subsequently consolidated with SCA No. 1759 pending before the RTC-Pasig City.⁵¹

For his part, Consing, Jr. filed a Motion to Dismiss Civil Case No. 99-1418 which was, however, denied by the RTC-Makati City in an Order⁵² dated November 16, 1999. Thereafter, he filed a Motion for Consolidation⁵³ (motion for consolidation) of Civil Case No. 99-1418 with his own initiated SCA No. 1759 pending before the RTC-Pasig City.

In an Order⁵⁴ dated July 16, 2007, the RTC-Makati City dismissed Consing, Jr.'s motion for consolidation and, in so doing, ruled that the cases sought to be consolidated had no identity of rights or causes of action and the reliefs sought for by Consing, Jr. from the RTC-Pasig City will not bar Unicapital from pursuing its money claims against him. Moreover, the RTC-Makati City noted that Consing, Jr. filed his motion only as an afterthought as it was made after the mediation proceedings between him and Unicapital failed. Consing, Jr.'s motion for reconsideration therefrom was denied in an Order⁵⁵ dated September 4, 2007. Hence, he filed a petition for *certiorari* before the CA, docketed as **CA-G.R. SP No. 101355**, ascribing grave abuse of discretion on the part of the RTC-Makati City in refusing to consolidate Civil Case No. 99-1418 with SCA No. 1759 in Pasig City.

On September 30, 2009, the CA rendered a Decision⁵⁶ sustaining the Orders dated July 16, 2007 and September 4, 2007 of the RTC-Makati City which denied Consing, Jr.'s motion for consolidation. It held that consolidation is a matter of sound discretion on the part of the trial court which could be gleaned from the use of the word "may" in Section 1, Rule 38 of the Rules of Court. Considering that preliminary steps (such as mediation) have already been undertaken by the parties in Civil Case No. 99-1418 pending before the RTC-Makati City, its consolidation with SCA No. 1759 pending before the RTC-Pasig City "would merely result in complications in the work of the latter court or squander the resources or

⁴⁹ Id. at 21-22, and 205.

⁵⁰ Id. at 207-209.

⁵¹ Id. at 146-150. See Order in Civil Case No. 99-95381 dated October 8, 2001. Penned by Judge (now Associate Justice of the CA) Rosmari D. Carandang.

⁵² Id. at 403-407. Signed by Acting Presiding Judge Bonifacio Sanz Maceda.

⁵³ Id. at 153-159. Dated June 18, 2007.

⁵⁴ Id. at 160-162. Dated July 16, 2007.

⁵⁵ Id. at 177-178. Dated September 4, 2007.

⁵⁶ Id. at 38-49.

remedies already utilized in the Makati case.”⁵⁷ Moreover, it noted that the records of the consolidated Pasig and Manila cases, *i.e.*, SCA No. 1759 and Civil Case No. 99-95381, respectively, had already been elevated to the Court, that joint proceedings have been conducted in those cases and that the pre-trial therein had been terminated as early as October 23, 2007. Therefore, due to these reasons, the consolidation prayed for would be impracticable and would only cause a procedural *faux pas*.

Undaunted, Consing, Jr. filed a motion for reconsideration therefrom but was denied by the CA in a Resolution⁵⁸ dated April 28, 2010. Hence, the present petition for review on *certiorari* in **G.R. No. 192073**.

The Proceedings Before the Court

After the filing of the foregoing cases, the parties were required to file their respective comments and replies. Further, considering that G.R. No. 192073 (Makati case) involves the same parties and set of facts with those in G.R. Nos. 175277 & 175285 (Pasig case), these cases were ordered consolidated per the Court's Resolution⁵⁹ dated November 17, 2010. On March 9, 2011, the Court resolved to give due course to the instant petitions and required the parties to submit their respective memoranda.⁶⁰

The Issues Before the Court

The essential issues in these cases are as follows: (a) in G.R. Nos. 175277 and 175285, whether or not the CA erred in upholding the RTC-Pasig City's denial of Unicapital, et al.'s motion to dismiss; and (b) in G.R. No. 192073, whether or not the CA erred in upholding the RTC-Makati City's denial of Consing, Jr.'s motion for consolidation.

The Court's Ruling

A. *Propriety of the denial of Unicapital, et al.'s motion to dismiss and ancillary issues.*

A cause of action is defined as the act or omission by which a party violates a right of another.⁶¹ It is well-settled that the existence of a cause of action is determined by the allegations in the complaint.⁶² In this relation, a

⁵⁷ Id. at 47.

⁵⁸ Id. at 70-71.

⁵⁹ *Rollo* (G.R. Nos. 175277 & 175285), p. 562; and *rollo* (G.R. No. 192073), p. 495.

⁶⁰ *Rollo* (G.R. Nos. 175277 & 175285), pp. 566-567; and *rollo* (G.R. No. 192073), pp. 530-531. Court Resolution dated March 9, 2011.

⁶¹ See Section 2, Rule 2 of the Rules of Court.

⁶² *Peltan Dev., Inc. v. CA*, 336 Phil. 824, 833 (1997).

complaint is said to sufficiently assert a cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for.⁶³ Thus, if the allegations furnish adequate basis by which the complaint can be maintained, then the same should not be dismissed, regardless of the defenses that may be averred by the defendants.⁶⁴ As edified in the case of *Pioneer Concrete Philippines, Inc. v. Todaro*,⁶⁵ citing *Hongkong and Shanghai Banking Corporation, Limited. v. Catalan*⁶⁶ (HSBC):

The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein? The inquiry is into the sufficiency, not the veracity of the material allegations. **If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants.**⁶⁷ (Emphasis supplied)

Stated otherwise, the resolution on this matter should stem from an analysis on whether or not the complaint is able to convey a cause of action; and not that the complainant has no cause of action. Lest it be misunderstood, failure to state a cause of action is properly a ground for a motion to dismiss under Section 1(g), Rule 16⁶⁸ of the Rules of Court (Rules), while the latter is not a ground for dismissal under the same rule.

In this case, the Court finds that Consing, Jr.'s complaint in SCA No. 1759 properly states a cause of action since the allegations therein sufficiently bear out a case for damages under Articles 19 and 26 of the Civil Code.

Records disclose that Consing, Jr.'s complaint contains allegations which aim to demonstrate the abusive manner in which Unicapital and PBI, et al. enforced their demands against him. Among others, the complaint states that Consing, Jr. "has constantly been harassed and bothered by [Unicapital and PBI, et al.]; x x x besieged by phone calls from [them]; x x x has had constant meetings with them variously, and on a continuing basis[,] [s]uch that he is unable to attend to his work as an investment banker."⁶⁹ In the same pleading, he also alleged that Unicapital and PBI, et al.'s act of

⁶³ See *Davao Light & Power Co., Inc. v. Judge, Regional Trial Court, Davao City, Br. 8*, G.R. No. 147058, March 10, 2006, 484 SCRA 272, 281.

⁶⁴ *The Consolidated Bank and Trust Corp. v. CA*, 274 Phil. 947, 955 (1991).

⁶⁵ G.R. No. 154830, June 8, 2007, 524 SCRA 153.

⁶⁶ 483 Phil. 525, 538 (2004).

⁶⁷ *Pioneer Concrete Philippines, Inc. v. Todaro*, supra note 65, at 162.

⁶⁸ Section 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(g) That the pleading asserting the claim states no cause of action;

x x x x

⁶⁹ *Rollo* (G.R. Nos. 175277 & 175285), p. 153.

“demand[ing] a postdated check knowing fully well [that he] does not have the necessary funds to cover the same, nor is he expecting to have them [is equivalent to] asking him to commit a crime under unlawful coercive force.”⁷⁰ Accordingly, these specific allegations, if hypothetically admitted, may result into the recovery of damages pursuant to Article 19 of the Civil Code which states that “[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.” As explained in the *HSBC* case:

[W]hen a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But a right, though by itself legal because [it is] recognized or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse. There is an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.⁷¹ (Emphasis supplied)

Likewise, Consing, Jr.’s complaint states a cause of action for damages under Article 26 of the Civil Code which provides that:

Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (1) Prying into the privacy of another's residence;
- (2) Meddling with or disturbing the private life or family relations of another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

The rationale therefor was explained in the case of *Manaloto v. Veloso III*,⁷² citing *Concepcion v. CA*,⁷³ to wit:

The philosophy behind Art. 26 underscores the necessity for its inclusion in our civil law. The Code Commission stressed in no uncertain terms that the human personality must be exalted. The sacredness of

⁷⁰ Id. at 153-a.

⁷¹ Supra note 66, at 538-539. (Citation omitted)

⁷² G.R. No. 171365, October 6, 2010, 632 SCRA 347.

⁷³ 381 Phil. 90 (2000).

human personality is a concomitant consideration of every plan for human amelioration. The touchstone of every system of law, of the culture and civilization of every country, is how far it dignifies man. If the statutes insufficiently protect a person from being unjustly humiliated, in short, if human personality is not exalted - then the laws are indeed defective. Thus, under this article, the rights of persons are amply protected, and damages are provided for violations of a person's dignity, personality, privacy and peace of mind.⁷⁴

To add, a violation of Article 26 of the Civil Code may also lead to the payment of moral damages under Article 2219(10)⁷⁵ of the Civil Code.

Records reveal that Consing, Jr., in his complaint, alleged that “[he] has come to discover that [Unicapital and PBI, et al.] are speaking of him in a manner that is inappropriate and libelous[;] [and that] [t]hey have spread their virulent version of events in the business and financial community such that [he] has suffered and continues to suffer injury upon his good name and reputation which, after all, is the most sacred and valuable wealth he possesses - especially considering that he is an investment banker.”⁷⁶ In similar regard, the hypothetical admission of these allegations may result into the recovery of damages pursuant to Article 26, and even Article 2219(10), of the Civil Code.

Corollary thereto, Unicapital, et al.’s contention⁷⁷ that the case should be dismissed on the ground that it failed to set out the actual libelous statements complained about cannot be given credence. These incidents, as well as the specific circumstances surrounding the manner in which Unicapital and PBI, et al. pursued their claims against Consing, Jr. may be better ventilated during trial. It is a standing rule that issues that require the contravention of the allegations of the complaint, as well as the full ventilation, in effect, of the main merits of the case, should not be within the province of a mere motion to dismiss,⁷⁸ as in this case. Hence, as what is only required is that the allegations furnish adequate basis by which the complaint can be maintained, the Court – in view of the above-stated reasons – finds that the RTC-Pasig City’s denial of Unicapital, et al.’s motion to dismiss on the ground of failure to state a cause of action was not tainted with grave abuse of discretion which would necessitate the reversal of the CA’s ruling. Verily, for grave abuse of discretion to exist, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act

⁷⁴ Supra note 72, at 365-366.

⁷⁵ Article 2219. Moral damages may be recovered in the following and analogous cases:

x x x x

(10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

x x x x

⁷⁶ *Rollo* (G.R. Nos. 175277 & 175285), p 154.

⁷⁷ *Id.* at 61-64.

⁷⁸ *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328, 347.

at all in contemplation of law.⁷⁹ This the Court does not perceive in the case at bar.

Further, so as to obviate any confusion on the matter, the Court equally finds that the causes of action in SCA No. 1759 were not – as Unicapital, et al. claim – misjoined even if Consing, Jr. averred that Unicapital and PBI, et al. violated certain provisions of the Corporation Law and the Revised Securities Act.⁸⁰

The rule is that a party's failure to observe the following conditions under Section 5, Rule 2 of the Rules results in a misjoinder of causes of action:⁸¹

SEC. 5. *Joinder of causes of action.* - A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

(a) The party joining the causes of action shall comply with the rules on joinder of parties;

(b) The joinder shall not include special civil actions governed by special rules;

(c) **Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and**

(d) Where the claims in all the causes of action are principally for recovery of money the aggregate amount claimed shall be the test of jurisdiction. (Emphasis supplied)

A careful perusal of his complaint discloses that Consing, Jr. did not seek to hold Unicapital and PBI, et al. liable for any specific violation of the Corporation Code or the Revised Securities Act. Rather, he merely sought damages for Unicapital and PBI, et al.'s alleged acts of making him sign numerous documents and their use of the same against him. In this respect, Consing, Jr. actually advances an injunction and damages case⁸² which

⁷⁹ *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-515.

⁸⁰ *Rollo* (G.R. Nos. 175277 & 175285), pp. 64-68.

⁸¹ See *Perez v. Hermano*, G.R. No. 147417, July 8, 2005, 463 SCRA 90, 104.

⁸² *Rollo* (G.R. Nos. 175277 & 175285), p. 156. In his complaint, Consing, Jr. essentially seeks that Unicapital, et al.: (a) "should be restrained from harassing plaintiff by threats of criminal prosecution, or any other coercive demand, or any other threats by reason of the transactions over the property in question"; (b) "should be forever barred from speaking about [him] in a derogatory fashion in so far as the surrounding circumstances of the transfers of property in question"; (c) pay him "x x x actual damages and consequential damages in the sum of ₱2,000,000.[00] continuing at the same rate per month for the whole period from May 1, 1999 until the controversy is resolved"; (d) pay him "x x x moral damages in the amount of at least [₱1,000,000.00] per month from May 1, 1999 until the controversy is resolved"; (e) pay him "x x x exemplary damages punitive in nature in the amount of at least [₱1,000,000.00] per month from May 1, 1999 until the controversy is resolved; and (f) pay him "x x x attorney's fees, costs of suit and any other reliefs that may be equitable in the premises."

properly falls under the jurisdiction of the RTC-Pasig City.⁸³ Therefore, there was no violation of Section 5, Rule 2 of the Rules, particularly, paragraph (c) thereof. Besides, even on the assumption that there was a misjoinder of causes of action, still, such defect should not result in the dismissal of Consing, Jr.'s complaint. Section 6, Rule 2 of the Rules explicitly states that a "[m]isjoinder of causes of action is not a ground for dismissal of an action" and that "[a] misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately."

Neither should Consing, Jr.'s failure to pay the required docket fees lead to the dismissal of his complaint. It has long been settled that while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its non-payment at the time of the filing of the complaint does not automatically cause the dismissal of the complaint provided that the fees are paid within a reasonable period.⁸⁴ Consequently, Unicapital, et al.'s insistence that the stringent rule on non-payment of docket fees enunciated in the case of *Manchester Development Corporation v. CA*⁸⁵ should be applied in this case cannot be sustained in the absence of proof that Consing, Jr. intended to defraud the government by his failure to pay the correct amount of filing fees. As pronounced in the case of *Heirs of Bertuldo Hinog v. Hon. Melicor*:⁸⁶

Plainly, while the payment of the prescribed docket fee is a jurisdictional requirement, even its *non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period*, more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment. **Thus, when insufficient filing fees were initially paid by the plaintiffs and there was no intention to defraud the government, the Manchester rule does not apply.**⁸⁷ (Emphasis and italics in the original)

Indeed, while the Court acknowledges Unicapital, et al.'s apprehension that Consing, Jr.'s "metered" claim for damages to the tune of around ₱2,000,000.00 per month⁸⁸ may balloon to a rather huge amount by the time that this case is finally disposed of, still, any amount that may by then fall due shall be subject to assessment and any additional fees determined shall constitute as a lien against the judgment as explicitly provided under Section 2,⁸⁹ Rule 141 of the Rules.

⁸³ See Section 19 of Batas Pambansa Bilang 129.

⁸⁴ See *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto*, G.R. No. 169108, April 18, 2006, 487 SCRA 339, 347.

⁸⁵ G.R. No. L-75919, May 7, 1987, 149 SCRA 562.

⁸⁶ 495 Phil. 422 (2005).

⁸⁷ Id. at 436.

⁸⁸ *Rollo* (G.R. Nos. 175277 & 175285), p. 69.

⁸⁹ SEC. 2. *Fees in lien*. – Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees.

Finally, on the question of whether or not Consing, Jr.'s complaint was properly verified, suffice it to state that since the copy submitted to the trial court was duly notarized by one Atty. Allan B. Gepty and that it was only Unicapital, et al.'s copy which lacks the notarization, then there was sufficient compliance with the requirements of the rules on pleadings.⁹⁰

In fine, the Court finds no reversible error on the part of the CA in sustaining the RTC-Pasig City's denial of Unicapital et al.'s motion to dismiss. As such, the petitions in G.R. Nos. 175277 and 175285 must be denied.

B. Propriety of the denial of Consing, Jr.'s motion for consolidation.

The crux of G.R. No. 192073 is the propriety of the RTC-Makati City's denial of Consing, Jr.'s motion for the consolidation of the Pasig case, *i.e.*, SCA No. 1759, and the Makati case, *i.e.*, Civil Case No. 99-1418. Records show that the CA upheld the RTC-Makati City's denial of the foregoing motion, finding that the consolidation of these cases was merely discretionary on the part of the trial court. It added that it was "impracticable and would cause a procedural *faux pas*" if it were to "allow the [RTC-Pasig City] to preside over the Makati case."⁹¹

The CA's ruling is proper.

It is hornbook principle that when or two or more cases involve the same parties and affect closely related subject matters, the same must be consolidated and jointly tried, in order to serve the best interest of the parties and to settle the issues between them promptly, thus, resulting in a speedy and inexpensive determination of cases. In addition, consolidation serves the purpose of avoiding the possibility of conflicting decisions rendered by the courts in two or more cases, which otherwise could be disposed of in a single suit.⁹² The governing rule is Section 1, Rule 31 of the Rules which provides:

SEC. 1. *Consolidation.* - When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

⁹⁰ See *rollo* (G.R. Nos. 175277 & 175285), pp. 100-101.

⁹¹ *Rollo* (G.R. No. 192073), pp. 47-48.


⁹² See *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*, G.R. Nos. 190462 and 190538, November 17, 2010, 635 SCRA 403, 415-416.

In the present case, the Court observes that the subject cases, *i.e.*, SCA No. 1759 and Civil Case No. 99-1418, although involving the same parties and proceeding from a similar factual milieu, should remain unconsolidated since they proceed from different sources of obligations and, hence, would not yield conflicting dispositions. SCA No. 1759 is an injunction and damages case based on the Civil Code provisions on abuse of right and defamation, while Civil Case No. 99-1418 is a collection and damages suit based on actionable documents, *i.e.*, the subject promissory notes. In particular, SCA No. 1759 deals with whether or not Unicapital and PBI, et al. abused the manner in which they demanded payment from Consing, Jr., while Civil Case No. 99-1418 deals with whether or not Unicapital may demand payment from Consing, Jr. based on the subject promissory notes. Clearly, a resolution in one case would have no practical effect as the core issues and reliefs sought in each case are separate and distinct from the other.

Likewise, as the CA correctly pointed out, the RTC-Makati City could not have been faulted in retaining Civil Case No. 99-1418 in its dockets since pre-trial procedures have already been undertaken therein and, thus, its consolidation with SCA No. 1759 pending before the RTC-Pasig City would merely result in complications on the part of the latter court or squander the resources or remedies already utilized in Civil Case No. 99-1418.⁹³ In this light, aside from the perceived improbability of having conflicting decisions, the consolidation of SCA No. 1759 and Civil Case No. 99-1418 would, contrary to its objective, only delay the proceedings and entail unnecessary costs.

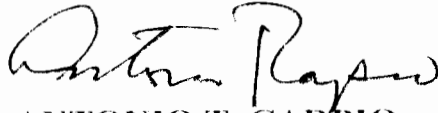
All told, the Court finds the consolidation of SCA No. 1759 and Civil Case No. 99-1418 to be improper, impelling the affirmance of the CA's ruling. Consequently, the petition in G.R. No. 192073 must also be denied.

WHEREFORE, the petitions in G.R. Nos. 175277, 175285 and 192073 are **DENIED**. Accordingly, the Court of Appeals' Joint Decision dated October 20, 2005 and Resolution dated October 25, 2006 in CA-G.R. SP Nos. 64019 and 64451 and the Decision dated September 30, 2009 and Resolution dated April 28, 2010 in CA-G.R. SP No. 101355 are hereby **AFFIRMED**.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁹³ Rollo (G.R. No. 192073), p. 47.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice

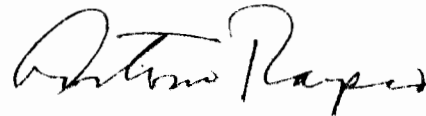


JOSE PORTUGAL PEREZ

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



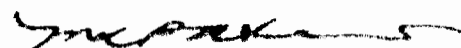
ANTONIO T. CARPIO

Associate Justice

Chairperson, Second Division

CERTIFICATION

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



MARIA LOURDES P. A. SERENO

Chief Justice