

Republic of the Philippines  
Fourth Judicial Region  
MUNICIPAL CIRCUIT TRIAL COURT  
OF EL NIDO-LINAPACAN, PALAWAN  
El Nido, Palawan

*Cauayan Island Resort Philippines, Inc.*  
Plaintiff,

-versus-

CIVIL CASE NO. 209

Cauayan Island Espania S.L. doing  
Business Under the name Cauayan  
Island Espana S.L. Philippines,  
Defendant.

Forcible Entry & Damages  
with Application for Temporary  
Restraining Order and Preliminary  
Injunction

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**DECISION**

By this Special Civil Action, Plaintiff Cauayan Island Resort Philippines, Inc. seeks to enjoin and restrain Defendant, CAUAYAN ISLAND ESPANA S.L. PHILIPPINES, persons acting in its behalf, its privies or agents from entering and/or forcibly dispossessing Plaintiff of their property Cauayan Island Resort in Barangay Buena Suerte, El Nido Palawan pursuant to Rule 70 of the 1997 Rules of Civil Procedure.

The allegations in the Complaint are synthesized as follows:

1. That the Plaintiff is the owner and in possession of the two (2) parcels of land located in Buena Suerte, El Nido Nido, Palawan consisting an area of 1.3224 ha. And 4.000 ha. covered by a tax declaration no. 066-13-007-01-003;
2. that it has introduced and continue to introduce improvement in the said properties for the purpose of developing and managing the same into an island resort, and is peaceful and continuous possession thereof;
3. that Emil Pedro Primorac Orche is continuing to manage the island resort, but it states that it reserves its right to institute the proper action as to fraudulent and criminal acts of Mr. Orche;
4. that up to present herein Plaintiff is in actual and prior possession of the subject property having introduced improvements including but not limited to their facilities and structures to make the island resort a world class resort;
5. that sometime in the first week of June 2017, Plaintiff received reports that the subject properties it owned and possessing are being taken over by unidentified foreigners and these persons were acting to dispossess Plaintiff of its right as owner and possessor of the parcels of land including its improvements and structures therein found;



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6. that on June 20, 2017, the board of directors and officers of Plaintiff went to the subject parcels of land and to their shock they found out the island resort was closed and construction were being done without their knowledge and consent;
7. that it discovered that Defendant together acting through unknown individuals together with Emil Pedro Primorac Orche singly and collectively using stealth and strategy and taking advantage of the absence of the officers and directors of the Plaintiff and the remoteness of the place is initiating acts of depriving Plaintiff of its right of possession;
8. that Defendant acting through unknown individuals most of them foreign nationals continue to threaten to take over possession of the parcels of land including the structures and improvement therein by fraud, stealth and strategy

Plaintiff has also applied for the Issuance of Preliminary Mandatory and /or Prohibitory Injunction against the defendants.

On July 10, 2017 the Defendant has filed its unverified Answer with Compulsory Counter claim and Opposition to the Application for Temporary Restraining Order and Writ of Preliminary Injunction and Omnibus Motion to set for Hearing the Affirmative and Special Defenses and for the Issuance of Show cause order for Direct Contempt against Plaintiff and its Counsel, Atty. Remegio C. Dayandayan, Jr.

In its Answer, Defendant avers the following:


1. that it admits the allegation in paragraph 1 of the Complaint that the Plaintiff is a corporation duly organized and existing under and by virtue of the law of the Philippines, however, it denies the due execution of the Secretary's Certificate authorizing the filing of this case;
2. that the alleged Secretary's Certificate and General Information Sheet signed by Imelda Cabading as Corporate Secretary are sham and products of fraud;
3. that in fact two complaints against Imelda Cabading and her cohorts were filed before the Office of the City Prosecutor of Makati City for Perjury and Falsification;
4. that the copy of the latest General Information Sheet filed by the true Corporate Secretary, Kathleen Capulong is attached therein;
5. that it is highly unbelievable and fantastic for a certain Victorino O. Agosto and the other persons named in the fake Secretary's Certificate to have an authority to institute, commence and filed cases given by a bogus Corporate Secretary;



6. that it denies paragraphs 3 to 6 and alleges that these allegations are untruthful presentation of facts, based on hearsay, self-serving and without factual or legal bases and mere conclusions of facts and law;
7. that the allegation that Emil Pedro Primorac Orche managed and continuing to manage the island resort is a clear untruthful presentation of facts because the island resort is being managed and the structure thereof is owned by the Defendant by virtue of the Memorandum of Agreement executed by herein parties;
8. that it admits that there are people who went to the island resort on June 20, 2017 and introduced themselves as the board of directors and officers of the plaintiff and asserted their alleged ownership and rights in the subject property;
9. that in fact the managers of the resort, Paul Jordan G. Aguilar and Nikka Denisse Quinsaat already filed a complaint before the Office of the Provincial Prosecutor for Grave Coercion and Usurpation of Authority;
10. that herein respondents are in possession of the subject property by virtue of a Contract of Lease executed by and between the Plaintiff and Defendant effective July 13, 2016, hence, herein defendant alleges that it cannot be said to have dispossessed of the subject property by fraud, stealth and strategy and this is not a case of forcible entry;
11. that this case complaint should be dismissed on the following grounds:  
(a) failure to state a case of action since plaintiff did not prove prior physical possession of the property ; (b) presence of Contract of Lease executed between the parties; (c) plaintiff failed to prove that there is an unlawful deprivation of the property by the defendant through force, threat, intimidation, strategy or stealth; (d) plaintiff and their counsel, Atty. Remegio Dayandayan are guilty of willful and deliberate forum shopping ;(e) failure of the plaintiff to comply with Section 5 Rule 7 of the Rules of Court and (f) plaintiff did not come to Court with clean hands.

On July 12, 2017, the Plaintiff through its counsel has filed an Urgent Motion for a Temporary Restraining Order and Preliminary Injunction. Thus, the Court set for hearing the Motion and the Opposition thereto and the Defendant's Special and Affirmative Defenses on July 28, 2017. On even date, both parties appeared and after the hearing, Atty. Remegio Dayandayan, Jr. manifested to vacate his application for the issuance of the TRO and Writ of Preliminary Injunction and both parties instead moved for the conduct of an ocular inspection and set the Preliminary Conference on September 15, 2017. Hence, upon agreement by both parties, the Court granted the manifestation. Parties were likewise directed to submit the required Pre-trial brief.

As to the Affirmative defenses raised by the Defendant, the Court finds the same to be evidentiary in nature and it denied the Motion of the Defendant to cite Plaintiff and its counsel, Atty. Dayandayan, Jr. for direct contempt as the rule on non-forum shopping was not violated by the latter.





An ocular inspection was conducted by the Court on September 15, 2017 where both parties were present with their respective counsels. In the afternoon of even date, the preliminary conference was conducted where Atty. Ronelo Calugas and Atty. Romar Cambri entered their appearance for the Plaintiff and Defendant respectively.


During the Preliminary Conference, Atty. Calugas, collaborating counsel for the Plaintiff moved that the judgment be rendered in this case based solely on the Complaint for failure of the Defendant to file the required Pre-trial brief at least three (3) days prior to the scheduled preliminary conference pursuant to Section 6 Rule 18 of the Rules of Court. Atty. Calugas manifested that they only received copy of the Defendant's Pre-trial Brief on September 13, 2017 or two (2) days before the preliminary conference. However, taking into consideration that, as manifested by Atty. Cambri that they sent the copy of their Pre-trial brief on September 12, 2017 through the LBC and sent a copy through registered mail on September 13, 2017 only due to typhoon, and in view of the presence of both parties in Court, the pre-trial brief of the defendant was admitted and the pre-trial conference was conducted. After the proceedings, the Court directed both counsels to submit their position paper within ten (10) days together with copy of their documentary exhibits. Both parties signed the Preliminary Conference Order on the same date. As the said order was already complied with by both parties, this case is now submitted for decision.

This Court is called upon to rule on the following issues:

1. Whether or not the Court should render judgment in this case based on the Complaint for failure of the Defendant to furnish the Plaintiff copy of the Pre-trial Brief at least three (3) days before the scheduled preliminary conference, and on the ground that the Answer of the Defendant was unverified.
2. Whether or not the Complaint made out a case of Forcible Entry;
3. Whether or not the Complaint was filed by the real party-in-interest;
4. Whether or not in the presence of the Memorandum of Agreement and Contract of Lease executed between the parties, the plaintiff proved that there is an unlawful deprivation of the property by the defendant through strategy and stealth;

#### THE RULING OF THE COURT

At the outset, Plaintiff raised the issue on the belatedly filed pre-trial brief of the Defendant and maintains that this Court should render judgment in this case based on the Complaint. To reiterate, this Court has already made its ruling resolving the said issue during the preliminary conference. Contrary to the allegation of the Plaintiff through its counsel that it only received copy thereof on



September 22, 2017, the Transcript of Stenographic Notes of the proceedings of the preliminary conference held on September 15, 2017 (p.p.3-5) shows that Atty. Calugas was furnished by Atty. Cambri copy of the pre-trial brief on that date. Hence, prior to the copy which the Plaintiff's counsel received on September 22, 2017, he likewise received copy from Atty. Cambri on September 15, 2017. The Court admitted the pre-trial brief of the defendant which it filed through registered mail and LBC on September 13, 2017 and September 12, 2017 respectively in view of the valid reasons given by the counsel for the defendant.

It is a well-entrenched rule in our jurisprudence that:

"The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice. (*Ginete v. Court of Appeals*, 357 Phil. 36, 51-53 (1998).


Thus, in the interest of the substantial justice, the Court admitted the pre-trial brief. It must be noted that the Plaintiff through its counsel did not move for the reconsideration of the order rather he participated fully in the preliminary conference until its termination and both parties signed the Preliminary Conference Order.

With respect to the issue of the unverified Answer, the Supreme Court in a number of cases has held that :

"Time and again, we have said that non-compliance with verification or a defect therein does not necessarily render the pleading fatally defective ( *Fernandez vs. Villegas*, G.R. No. 200191, August 20, 2014, 733 SCRA 548, 556).

"Verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional. It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, "the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served."(see case of *Heirs of Austino and Genoveva Mesina vs. Heirs of Fian, Jr.*, G.R. No. 201816, April 8, 2013).

As revealed by the records, the Defendant through its counsel has already submitted to Court the verification and the identity of Kathleen Capulong, thus, the Answer is now verified rendering the issue moot and academic. The defendant on its part assails the authority of Victorino O. Agosto, the one who filed this instant




Complaint alleging that the Secretary's Certificate, the GIS and the Board Resolutions of the Plaintiff are false and untruthful. The Court finds based on evidence, that Mr. Agosto was properly authorized by the Plaintiff to file this case pursuant to the Board Resolution of the Corporation. Even if there is a Complaint filed by Emil Pedro Primorac Orche against Imelda Cabading, Trevor L. Evans and Armie C. Evans for Perjury and Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code, and pending before the Office of the City Prosecutor in Makati City, it does not give this Court any reason to declare those documents as void, neither does it have the authority to question the veracity thereof because it is not within the ambit of this court's jurisdiction. The Court presumes their validity, thus, this case was filed by the real party-in-interest.

Nevertheless, the Court after a careful perusal of the entire records of the case and the scrutiny of the evidence of both parties, finds that this is not a case of Forcible Entry based on the following grounds:

First, Plaintiff in paragraph 5 of its Complaint states that **up to present it is in actual possession of the subject properties**; Paragraph 8 states that Emil Orche singly and collectively with unknown individuals **are initiating acts of depriving plaintiff of its right of possession**; Paragraph 9 states that the defendant acting through unknown individuals most of them foreign nationals **continue to threaten to take over possession of the subject properties including the improvements therein**.

"In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: *first*, the plaintiff must allege prior physical possession of the property, and *second*, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court *i.e.*, by force, intimidation, threat, strategy or stealth". ( David vs. Cordova, G.R. No. 152992 July 28, 2005; Sps. Tirona vs. Alejo, G.R. No. 129313, October 10, 2001, 367 SCRA 17, 30.)

A cursory reading of those cited paragraphs in the Complaint shows that up to present, Plaintiff is in actual possession of the subject properties. Although it alleged in Paragraphs 6 to 8 that it received reports that the subject property including the structures thereon and its facilities are being taken over by unidentified foreigners and they were acting to dispossess plaintiff of its right as owner; that they were shock to find out on June 20, 2017 that the island was closed and construction were being done without their consent; that Plaintiff discovered that defendant acting through unknown individuals together with Emil Orche through strategy and stealth are initiating acts of depriving Plaintiff of its right of possession, the Plaintiff failed to allege that it was deprived already of its possession over the subject properties. In view of its allegation that up to present it





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is in actual possession of the subject property, there is no forcible entry to speak of, simply put, there is no dispossession of the properties by the Defendant. Further, by alleging that the defendants through unknown individuals continue to threaten to take over possession of the property and that the latter are initiating acts of depriving plaintiff of possession, Plaintiff is trying to impress this Court that the defendant is not yet in possession of the property, that it is just commencing the acts of dispossession and that there is just a threat. Furthermore, the relief being prayed for by the Plaintiff suggests that it just wanted the Court to restrain and enjoin the Defendant, the persons acting in its behalf, its privies and agents from entering and/or forcibly dispossessing Plaintiff of the subject property and the structures found therein. Perforce, it could be safely concluded that the Plaintiff was not yet dispossessed of the subject properties, this being so, this case could not be considered as a forcible entry case pursuant to Section 1, Rule 70 of the Rules of Court. It must be stressed at this point that "An action of forcible entry and detainer may be maintained only against one in possession at the commencement of the action, and not against one who does not in fact hold the land" (*Co Tiac v. Natividad*, 80 Phil. 127, 131 (1948)). Under Section 1, Rule 70 of the Rules of Court, the action may be filed against persons unlawfully withholding or depriving possession or any person claiming under them. Thus, taking into consideration Plaintiff's own declaration in its Complaint that up to present it still holds the land in dispute, dismissal of this case is hereby warranted for want of jurisdiction.

Moreover, "well-settled is the rule that the jurisdiction of the court and the nature of the action are determined by the averments in the complaint. To give the court jurisdiction to effect the ejectment of an occupant or a deforciant from the land, it is necessary that the complaint should embody a statement of facts that brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. On its face, the complaint must show enough ground for the court to assume jurisdiction without resort to parol testimony." (*Sarmiento v. CA*, 320 Phil. 146, 153, November 16, 1995; *Arcal v. CA*, 348 Phil. 813, 823, January 26, 1998; *Sumulong v. CA*, 232 SCRA 372, 385, May 10, 1994; *Cruz v. Torres*, 316 SCRA 193, 196, October 4, 1999).

Second, even if the Defendant in its Answer and in its Position Paper admits that it (the Defendant) is in actual possession of the subject property through its President Emil Pedro Primovac Orche, still the Court considers the fact that the inception of its possession is lawful because of the existence of the Memorandum of Agreement entered into between herein parties which was executed on December 11, 2013. This document was duly notarized and is considered a public document. Be it noted though that the Court denied admission of the Supplemental Position paper of the Defendant for being filed beyond the ten-day period provided under the Rule, which is tantamount to a Motion for extension of time to file pleading which is one of the prohibited pleadings under Section 19 of the Rule on Summary Procedure. However, records show that the Defendant has already submitted the certified photocopy of the MOA and Contract of Lease which are



attached to its Position Paper which the Court received on time. Hence, the latter certified photocopy documents are admitted.


Apparently in the said Memorandum of Agreement, the parties in this case, agreed that the Defendant shall commence and substantially complete the construction of the Resort on the land within five years from effective date and that they agreed to enter into a Lease agreement for twenty-five (25) years.

Records would show that subsequently, a Contract of Lease was executed by the parties on December 6, 2016 and took effect on July 13, 2016 or at least five (5) months prior to its execution. Its term is for twenty-years from the date of its effectivity. Thus, with the presentation of these two (2) documents, it could be safely concluded that the entry of the Defendant into the land subject of this case is legal from the beginning. Although the Plaintiff denied its existence and contends that it did not authorize Emil Orche to enter into such agreements as no Board Resolution was presented to that effect, the Court considers the two contracts to be binding between the parties as they are considered as public documents, thus:

“Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity which may only be rebutted by clear and convincing evidence” ( *Lazaro v. Agustin*, G.R. No. 152364, April 15, 2010, 618 SCRA 298, 309. See also *Tamani v. Salvador*, G.R. No. 171497, April 4, 2011, 647 SCRA 132, 149).

This Court has no authority to declare the Memorandum of Agreement and the Contract of Lease void based merely on the denial of the Plaintiff as to their existence and due execution because it is outside of the jurisdiction of this court do so. It is for the Plaintiff to file a separate action before the proper court to assail their validity as the documents' validity and enforceability could not be attacked indirectly through this summary proceedings for ejectment where the issue is merely centered on who between the parties has the better right to possess the subject property.

Albeit the fact the Plaintiff denies the due execution and existence of those documents and assails the authority of Emil Pedro Primorac Orche to enter into agreement with the Defendant in behalf of the Plaintiff Corporation, it failed to present any evidence that the Contract of Lease and the Memorandum of Agreement were already declared void by the proper Court. Thus, this Court has no other recourse but to admit their existence and due execution, and consider them valid until annulled. This being so, the Court finds that the entry of the Defendants into the subject property is legal from the beginning by virtue of those documents.





However, even assuming *ex gratia argumenti* that Plaintiff was able to present clear and convincing proofs that those assailed documents were already declared void by the proper Court, still the Plaintiff itself admitted by presenting to Court its Board Resolution Nos. 1 and 2 Series of 2010, that it gave Emil Pedro Primorac Orche (being one of the incorporators of the Plaintiff Corporation and now the President of Defendant corporation) the authority to manage, approve and have the final authority regarding the management and transactions concerning Plaintiff Cauayan Island Resort. Consequently, the Plaintiff is now estopped from claiming that the entry of Defendant through Kathleen Capulong and Emil Orche was unlawful and unauthorized.

As revealed during the ocular inspection conducted by the Court on September 15, 2017, the resort is already operational and is in peaceful situation, it has a swimming pool, a restaurant, a reception cottage with some crew who attended to the court personnel and both parties, it has more than fifteen (15) villas and two (2) wharfs and other structures which appear to have been constructed more or less five (5) years prior to the institution of this action.


Verily, "It is the nature of defendant's entry into the land which determines the cause of action, whether it is forcible entry or unlawful detainer. If the entry is illegal, then the action which may be filed against the intruder is forcible entry. If, however, the entry is legal but the possession thereafter becomes illegal, the case is unlawful detainer" (Sarona v. Villegas, 131 Phil. 35, 372 (1968), cited in Amada Zacarias vs. Victoria Anacay, et.al., G.R. No 202354, Sept. 24, 2014).

As herein Defendant's entry into the subject property was with consent of the Plaintiff and was lawful at its inception, this case does not fit to the jurisprudential precept of Forcible Entry.

Taking into consideration the facts of the case and the position of both parties, the Court could not consider this case as unlawful detainer either because the Plaintiff has miserably failed to establish the following:

- a) expiration or termination of the defendant's right to hold possession;
- b) the withholding by the defendant of possession of the land or building after the expiration or termination of the right to possess;
- c) and letter of demand upon defendant lessee to pay the rental or comply with the terms of the lease and vacate the premises;  
(Subhash c. Pasricha, et.al vs. Don Luis Dison Realty Inc. GR No. 136409, March 14, 2008).

However, the Plaintiff is not left without recourse because if indeed it believes that it has a cause of action against the Defendant and any person or agent acting for in its behalf, it can file any appropriate action before the proper forum



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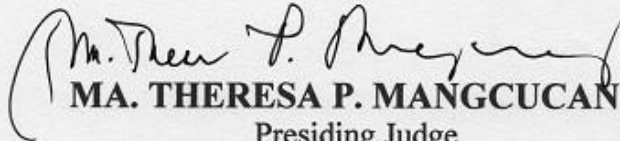
as the law affords protection of everyone' rights, and properties including the juridical persons like both parties in this case.

WHEREFORE foregoing premises considered, judgment is hereby rendered, this instant case is hereby ordered DISMISSED for lack of jurisdiction without prejudice.

No pronouncement as to cost.

IT IS SO ORDERED.

This 30<sup>th</sup> day of October, 2017, at El Nido, Palawan.

  
**MA. THERESA P. MANGCUCANG**  
Presiding Judge

Copy furnished:

1. Atty. Remegio C. Dayandayan, Jr.- counsel for the Plaintiff
2. Atty. Ronelo Calugas- counsel for the Plaintiff
3. Atty. Romar Cambri- counsel for the Defendant
4. Plaintiff
5. Defendant

