



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
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October 11, 2022

MEMORANDUM

FOR : The Regional Executive Director
DENR - MIMAROPA, 1515 L&S Building
Roxas, Blvd., Ermita, Manila

ATTENTION: *The OIC-Assistant Regional Director
for Technical Services*

FROM : The Provincial Environment and
Natural Resources Officer

SUBJECT : **DECISION DATED SEPTEMBER 8, 2022 RE: CIVIL CASE NO. 262 FOR ANNULMENT OF DEED OF ABSOLUTE SALE AND CANCELLATION OF TCT NO. 065-2012000117. ITS DERIVATIVE TITLES: TCT NO. 2014-000001, TCT NO. 2014-000002, TCT NO. 2014-000003, TCT NO. 2014-000004; WITH APPLICATION FOR TEMPORARY RESTRAINING ORDER**

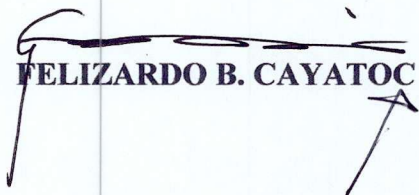
Forwarded is the Decision dated September 8, 2022 relative to Civil Case No. 262 entitled "Sps. Leonides and Yolinda Echague, Plaintiffs, versus Rosie Heredero, the heirs of the late Nestor Heredero namely: Rosie Heredero, Nia Marie Heredero, Marjorie Heredero, Ricky Heredero, Marie Cecilia Bahunsua, Marie Grace Torremonia, Sherrie Heredero, Michelle Heredero, Jether Ryes, Private Defendants; and Register of Deeds of Palawan and DENR-PENRO, Public Defendants.


For your information and record.

Copy furnished:

Atty. Jazmin D. Altea
Legal Unit, PENRO-Palawan

TSD/File *kkva
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FELIZARDO B. CAYATOC

DENR-PALAWAN
PENRO-RECORDS
RELEASED
By 
Date: **13 OCT 2022** IN **22-2733**

answer to the complaint on February 14, 2022, through counsel. After the answer was filed, Presiding Judge Ma. Theresa Mangcucang, in her Order dated February 17, 2022, inhibited from hearing and trying the instant case for reasons stated therein. Pursuant to A.O. No. 19, Series of 2022, dated April 7, 2022, the instant case was assigned and received, by the undersigned, on May 4, 2022.

Meanwhile, the Court did not acquire jurisdiction over the person of defendant Jether Reyes on the ground that there was no service of summon on the person of said defendant. Per return of the summon personally served to defendant Jether Reyes, dated December 14, 2021, there is **no** Jether Reyes residing at the given address on record. Further, the person who was present at the given address, refused to give his personal information. Still at the time of the scheduled pre-trial no action was taken by the plaintiffs on the matter. Hence, the complaint filed against defendant Jether Reyes, was dismissed without prejudice, on the ground of lack of jurisdiction over the person of defendant Jether Reyes.

Pre-trial hearing was set on May 27, 2022, through video conference hearing, but due to unstable internet connection and poor audio, the pre-trial was reset on July 5, 2022. On July 5, 2022, pre-trial proceeded and after the question of facts and laws were identified, the pre-trial was terminated. With the consensus of the counsels of both parties, the Court submitted the instant complaint for judgement. Upon request of the counsels of both parties, they were given reasonable time to file their respective memorandum. Hence, this decision.

FACTS OF THE CASE

PLAINTIFFS' VERSION

Sps. Jovito Rey and Jasmin Nadayao are the registered owner of a parcel of land covered by OCT No. 31591, containing an area of THREE THOUSAND ONE HUNDRED TEN (3,110) Sq.ms. On December 11, 2013. Plaintiffs Sps. Leonides and Yolinda Echague bought said property from Sps. Jovito Rey and Jasmin Nadayao, and eventually TCT No 065-2015000655 in the name of the Plaintiffs on August 27, 2015.

Later, after buying the property from the Sps. Rey, Plaintiffs began possessing, clearing, and improving the property and discovered that defendants Sps. Nestor and Rosie Heredero claimed to be the registered owners of Lot 1125, PLS 31 and Lot 1126, PLS 31, which they bought from the original owners Sps. Alipio and Lourdes Nadayao on installment basis in 1989 and the deed of absolute sale was final executed on October 17, 2003.

On the other hand, Sps. Alipio Nadayao and Lourdes D. Nadayao, were issued by the Bureau of Lands, Homestead Patent No. 134268, on October 28, 1971, and was registered before the Register of Deeds for Palawan on May 31, 1979, covered by Original

Certificate of Title (OTC) No. G-7865. The parcel of land, as appearing on the title, was denominated to consist of two lots, particularly: Lot 1125, PLS-31, containing 29,447 square meters; and Lot 1126, PLS-31, containing 37,377 square meters. Making up for an aggregate area of 66,824 square meters. The grant had a prohibitory period provision to transfer or convey for five (5) to twenty-five (25) years from the date of its issue or until May 31, 2004, pursuant to Section 118, 121, 122 and 124 of Commonwealth Act No. 141 Section 122 of Act 496.


On October 17, 2003, Sps Alipio Nadayao and Lourdes Delos Santos sold the 66,824 square meters property to spouses Nestor and Rosie Heredero, by virtue of a Deed of Absolute Sale, executed between them, without the authority for the Bureau of Lands or authority from the Secretary of DENR, as required by law. The sale was annotated on January 24, 2012, and totally cancelled OCT No. G-7865. On January 24, 2012, TCT No. 065-2012000117 was issued in the name of Spouses Nestor and Rosie Heredero, consisted of two lots, containing an area of 29,447 square meters and 37,377 square meters.

On July 14, 2012, a subdivision survey on the 29,447 square meters (Lot 1125) was conducted on the property, and approved on April 29, 2013. This was annotated on TCT No. 065-2012000117 as Entry No. 2013002087. Lot 1125 was subdivided into four (4) lots, to wit: Lot 1125-A, containing 10,193 Square Meters; Lot 1125-B, containing 4,210 Square Meters; Lot 1125-C, containing 9,035 Square Meters; and Lot 1125-D, containing 6,009 Square Meters.

On June 5, 2013, Sps. Heredero sold Lot 1125-A and Lot 1125-B, to Jether T. Reyes, eventually, TCT No. 065-2014000001 and TCT No. 065-2014000002, respectively, were issued to Jether T. Reyes. Lot 1125-C is now covered by TCT No. 065-2014000003, and Lot 1125-D is covered by TCT No. 065-2014000004.

Sps. Heredero filed a petition for cancellation of TCT No 065-2015000655, in the name of the Plaintiffs, before the Branch 51 of the Regional Trial Court of Palawan, docketed as Civil Case No. 5297, to nullify the Patent and OCT No. E-31547, OCT No. E-31548, OCT No. E-31591 (in the name of Sps. Jovito and Jasmin Rey), and subsequent derivative titles. The RTC ruled in favor of Spouses Heredero, and still subject of an appeal before the Court of Appeals.

Plaintiffs prayed for the following relief:

- a. Cancelling Transfer Certificate of Title (TCT) No. 065-2012000117 in the name of sps. NESTOR & ROSIE HEREDERO, and all its derivative titles, to wit: 1.) TCT No. 065-2014000003 and TCT No. 065-2014000004 in the name of sps. NESTOR & ROSIE HEREDERO; 2.) TCT No. 065-2014000001 and TCT No. 065-2014000002 in the name of JETHER T. REYES;
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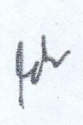
- b. Ordering the Public Defendants to reconvey the subject lot to plaintiffs;
- c. Ordering Private Defendant to pay Plaintiffs the following amounts of damages, to wit:
 - i. MORAL DAMAGES in the amount of Php 1,000,000.00;
 - ii. EXEMPLARY DAMAGES in the amount of Php 1,000,000.00; and
 - iii. LITIGATION EXPENSES in the amount of Php 500,000.00.
- d. Other reliefs just and proper under the premises are likewise prayed for.

The following exhibits were submitted In support of the plaintiffs' complaint, to wit:

- Exhibit "A" - E-copy of OCT No. G.7865;
- Exhibit "A-1" - Copy of Entry No. 2012000080 of the deed of sale dated October 17, 2003;
- Exhibit "B" - E-copy of TCT No. 065-2012000117; B-1 - Entry No.2013002087;
- Exhibit "C" - Approved subdivision plan as Entry No. 2013002087 on TCT No. 065-2012000117;
- Exhibit "D" - Certified true copy of Deed of Sale, Dated June 5, 2013;
- Exhibit "E" - E-copy of TCT No. 065-2014000001;
- Exhibit "F" - E-copy of TCT No. 065-2014000002;
- Exhibit "G" - Tax Dec No. 18-13-008-0548;
- Exhibit "H" - Tax Dec No. 18-13-008-0547;
- Exhibit "I" - E-copy of TCT No. 065-2014000003;
- Exhibit "J" - Tax Dec No. 18-13-008-0550;
- Exhibit "K" - E-copy of TCT No. 065-2014000004;
- Exhibit "L" - Tax Dec No. 18-13-008-0549;
- Exhibit "M" - EJS of Nestor Heredero;
- Exhibit "N" - RTC branch 51 order dated March 8, 2019;
- Exhibit "O" - E-copy of OCT No. 31591;
- Exhibit "P" - E-copy of TCT No. 065-20155000655;
- Exhibit "Q" - Judicial Affidavit of Leonides Echague; and
- Exhibit "R" - Judicial affidavit of Representative of the Register of Deeds;

DEFENDANTS' VERSION

The property covered by OCT No. G-7865, registered in the name of Sps. Alipio Nadayao and Lourdes D. Nadayao, was sold to Defendants Spouses Nestor and Rosie Heredero, on October 17, 2003, thirty-two (32) years from the issuance of patent on October 28, 1971. The patent or ownership of Sps. Alipio and Lourdes Nadayao over Lot 1125 and 1126, PLs-31 was issued on October 28, 1971 and registered/transcribed at the Register of Deeds for Palawan, on May 31, 1979 that led to the issuance of Original Certificate of Title No. G-7865. On October 17, 2003, after Thirty-Two (32) years, Spouses Alipio and Lourdes Nadayao sold the two lots covered by OCT G-7865 in favor of Spouses Nestor and Rosie Heredero.



On the other hand, Free Patent No. 045312-0721740 was issued by the DENR to Jovito Rey which was the basis for the issuance of OCT No. 31591. Jovito Rey sold said property covered by OCT No. 31591 in favor of plaintiffs Sps. Echague and for which TCT No. 065-2015000655 was issued in their names. OCT No. 31591 and TCT No. 065-2015000655 were directly assailed in Civil Case No. 5297 in court on the ground that the DENR can no longer grant free patents on lands that are already private and titled. Consequently, the Court upheld the title issued in favor of Sps. Alipio and Lourdes Nadayao. And the decision of the Court *a quo* in Civil Case No. 5297 was affirmed on appeal.

The sale of the subject property by Sps. Alipio and Lourdes Nadayao in favor of defendants Sps. Nestor and Rosie Heredero, which was after Thirty-Two (32) years from the date of issuance of the Free Patent, is valid and not within the Five (5) and Twenty-Five years, prohibitory period of conveyance provided under Section 122 of Act 496.

Defendants submitted the following documentary exhibits in support of their defense, to wit:

- Exhibit I - OCT G-7865 — Original Certificate of title issued to Alipio Nadayao;
- Exhibit 2 - Decision in DENR Case No. M-01-15-L
- Exhibit 3 - Official Receipt evidencing payment of acceptance fee for this case paid by the defendants
- Exhibit 4 - Official Receipt evidencing payment for preparation of Judicial Affidavit and related expenses for the Answer
- Exhibit 5 - Special Power of Attorney of MARY GRACE H. TORREMONIA.

Defendants prayed for the following reliefs,

1. Dismissing the complaint filed by the plaintiffs on the ground stated above;
2. Granting the defendants compulsory counterclaim by ordering the plaintiffs to —
 - a. pay the defendants the amount of TWO HUNDRED THOUSAND PESOS as and for other attorney's fees and litigation expenses if the case will reach a full-blown trial but if the case will be dismissed immediately without further hearing, for the plaintiffs to be ordered to pay the expenses already incurred by the defendants as evidenced by Exhibits 3 and 4;
 - b. pay all the defendants herein the amount of ONE MILLION PESOS (Php1,000,000.00) as moral damages;
 - c. pay all the defendants herein the sum of ONE MILLION PESOS (Php1,000,000.00) as exemplary damages;
 - d. pay the costs of the suit.

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ISSUES TO BE RESOLVED

- I. **When is the reckoning period of the five (5) years and twenty-five (25) years prohibited period under Sections 118, 120, 121, 122 and 124 of Commonwealth Act 141.**
- II. **Whether or not this case falls within the ambit of R.A. 11231 and whether it applies to Homestead Patent.**

DISCUSSION AND RULING OF THE COURT

After the pre-trial, this Court and counsels for the plaintiffs and defendants agreed to submit the instant complaint for judgement.

Rule 18 Section 10 provides,

Section. 10. *Judgment after pre-trial.* — Should there be no more controverted facts, or no more genuine issue as to any material fact, or an absence of any issue, or should the answer fail to tender an issue, *the court shall, without prejudice to a party moving for judgment on the pleadings under Rule 34 or summary judgment under Rule 35, motu proprio include in the pre-trial order that the case be submitted for summary judgment or judgment on the pleadings, without need of position papers or memoranda. In such cases, judgment shall be rendered within ninety (90) calendar days from termination of the pre-trial.* (Italics supplied)

The order of the court to submit the case for judgment pursuant to this Rule shall not be the subject to appeal or *certiorari*. (n)

Seemingly, after the pre-trial, the only issue to be resolved by this Court is whether or not the 5 years and 25 years prohibitory period provided under *Section 118, in relation to Section 124, of Commonwealth Act No. 141 of 1936, "An Act to Amend Compile The Laws Relative to Lands of the Public"*, still stands and enforceable with the enactment of *Republic Act 11231, "An Act Removing the Restrictions Imposed on the Registration, Acquisition, Encumbrance, Alienation, Transfer and Conveyance of Land Covered by Free Patents Under Sections 118, 119 and 121 of Commonwealth Act No. 141, Otherwise Known as "The Public Land Act", as Amended"*.

Sections 118 and 124 of Commonwealth Act 141, provides:

Section 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions ***shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after***

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the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds.

Section 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State."


On the other hand, Republic Act No. 11231, "**An Act Removing the Restrictions Imposed on the Registration, Acquisition, Encumbrance, Alienation, Transfer and Conveyance of Land Covered by Free Patents Under Sections 118, 119 and 121 of Commonwealth Act No. 141, Otherwise Known as "The Public Land Act", as Amended**", signed into law on February 22, 2019, provides:

"Section 1. This Act shall be known as the "Agricultural Free Patent Reform Act".

Section 2. It is the declared policy of the State to remove the restrictions on free patents to allow the efficient and effective utilization of these lands in order to contribute to wealth creation, entrepreneurship, and economic development.

Section 3. Agricultural public lands alienated or disposed in favor of qualified public land applicants under Section 44 of Commonwealth Act No. 141, as amended, shall not be subject to restrictions imposed under Sections 118, 119 and 121 thereof regarding acquisitions, encumbrances, conveyances, transfers, or dispositions. Agricultural free patent shall now be considered as title in fee simple and shall not be subject to any restriction on encumbrance or alienation.

Section 4. *This Act shall have retroactive effect and any restriction regarding acquisitions, encumbrances, conveyances, transfers, or dispositions imposed on agricultural free patents issued under Section*



44 of Commonwealth Act No. 141, as amended, before the effectivity of this Act shall be removed and are hereby immediately lifted. *Provided*, That nothing in this Act shall affect the right of redemption under Section 119 of Commonwealth Act No. 141, as amended, for transactions made in good faith prior to the effectivity of this Act.

Section 5. If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

Section 6. All laws, decrees, orders, rules, regulations, circulars and other issuances or parts thereof which are inconsistent with this Act are hereby repealed, amended or modified accordingly."

Justice Alfredo Benjamin S. Caguioa, in his concurring opinion in SPOUSES DIONISIO DUADUA SR., et.al. VS. R.T. DINO DEVELOPMENT CORPORATION REPRESENTED BY ITS PRESIDENT ROLANDO T. DINO, et.al., G.R. No. 247816, July 15, 2020, expanded the discussion on the effect of the enactment of R.A. 11231, as follows:

"However, I wish to broaden the context of the present petition by situating the same in 'the larger conversation that involves the recent pivotal and retroactive repeal by Republic Act No. 11231 (R.A. 11231), or the "Agricultural Free Patent Reform Act of 2019" of the former restrictions put in place by C.A. 141. R.A. 11231 expressly lifted all encumbrances and conditions from conveyance of **homestead property**, including the general right to repurchase as previously imposed under C.A. 141. The right to repurchase herein sought to be exercised by the petitioners is, therefore, but a vestige of the homestead structure that has undoubtedly come undone. (Emphasis supplied)

Most on point are Sections 3 and 4 of R.A. 11231 which provide:

Section 3. Agricultural public lands alienated or disposed in favor of qualified public land applicants under Section 44 of Commonwealth Act No. 141, as amended, **shall not be subject to restrictions imposed under Sections 118, 119 and 121 thereof regarding acquisitions, encumbrances, conveyances, transfers, or dispositions.** Agricultural free patent shall now be considered as title in fee simple and shall not be subject to any restriction on encumbrance or alienation. (Emphasis supplied.)

Section 4. **This Act shall have retroactive effect and any restriction regarding acquisitions, encumbrances, conveyances, transfers, or dispositions imposed on agricultural free patents issued under Section 44 of Commonwealth Act No. 141,** as amended, before the effectivity of this Act shall be removed and are hereby immediately lifted: *Provided*, That nothing in this Act shall affect the right of redemption under Section 119 of Commonwealth

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Act No. 141, as amended, for transactions made in good faith prior to the effectivity of this Act. (Emphasis supplied.)

R.A. 11231 lifted the prohibition against the encumbrance or alienation of lands acquired under free patent, except if the same is in favor of the government or any of its branches, within five years from the issuance of the patent or grant. It also removed the condition for repurchase, where the applicant, his widow, or legal heirs can repurchase a land acquired under the free patent provisions within five years from the date of transfer or sale. Finally, it did away with the limitation that except for solely commercial, industrial, educational, religious, charitable, or right of way purposes, and upon approval of the patentee and the Secretary of Department of Environment and Natural Resources, corporations, associations, or partnerships are forbidden from acquiring any property right, title or interest on free patent.

As it stands, ***the discarding of these circumscriptions left the agricultural free patent a title in fee simple, free of any restriction on its encumbrance or alienation.*** Further, since the repeal also applies retroactively, ***any prior defective disposition not included under the right of redemption in Section 119 is effectively cured, and any restrictions on the acquisitions, encumbrances, or dispositions concerning agricultural free patents issued prior to the enactment of R.A. 11231 are deemed lifted.*** (Emphasis supplied)

Prospectively, therefore, for all instances, from the date of promulgation of R.A. 11231, all lands covered by homestead patents are free from any and all encumbrances and conditions."¹ (Emphasis supplied)

Succinctly and clearly, Sections 3 and 4 of R.A. 11231, already removed and lifted all restrictions on the ***alienation, transfer, or conveyance of any homestead*** provided under Sections 118, 119, 122, and 124 of C.A. no. 141. Moreover, R.A. 11231 has retroactive effect. Hence, all laws and jurisprudence pertaining to the restrictions and prohibitions under Sections 118, 119, 121 and 124 of C.A. 141 are now set-aside and superseded by the enactment of R.A. 11231. With the lifting and removing of the restrictions under Sec. 118 of Commonwealth Act, this Court has no more jurisdiction to try and hear the instant complaint, for lack of issue to be resolved, tantamount to lack of jurisdiction over the subject matter. Further, the provisions of Republic Act No. 11231 apply to all agricultural free patents, and for this matter, to the homestead patent awarded to Spouses Alipio and

¹ Concurring Opinion of Justice Alfredo Benjamin S. Caguiao in G.R. No. 247816, July 15, 2020

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Lourdes Nadayo. Henceforth, the question on whether or not the deed of sale executed by Spouses Alipio and Lourdes Nadayao in favor of Spouses Nestor and Rosie Heredero falls within the prohibitory period of five and twenty-five years, as provided under Section 118 of Commonwealth Act 141, is already moot and academic pursuant to the enactment of Republic Act 11231.

In the recent decision of the Supreme Court, BERNADETTE S. BILAG, et.al. vs. ESTELA AY-AY, ANDRES ACOP, Senior Associate Justice Estela Perlas-Bernabe, stated,

X x x x. It should be stressed that the court *a quo's* lack of subject matter jurisdiction over the case renders it without authority and necessarily obviates the resolution of the merits of the case. To reiterate, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void and without any binding legal effects. X x x x x.

"Jurisprudence has consistently held that "[j]urisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.". Perforce, *it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.* The Court's pronouncement in *Tan v. Cinco*, is instructive on this matter, to wit:

A judgment rendered by a court without jurisdiction is null and void, and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect. "²

As regards the counterclaim of the defendants, the same is likewise dismissed for lack of basis.

The damages claimed by the defendants are compulsory counter-claim, defined

² BERNADETTE S. BILAG, et.al. vs. ESTELA AY-AY, ANDRES ACOP, G.R. No. 189950, April 24, 2017



under Section 7 of Rule 6 of the Revised Rules of Court, which reads,

RULE 6 Section 7

Section 7. Compulsory counterclaim. — A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount. A compulsory counterclaim not raised in the same action is barred, unless otherwise allowed by these Rules.

In the case at bar, after the pre-trial was terminated, there were no more controverted facts or genuine issue as to any material fact, hence, the instant complaint was submitted for summary judgement with the consensus of the counsels for both parties, who opted to submit their respective memorandum. No motion to present evidence to support and prove the compulsory counter-claim was manifested by the counsel for the defendants despite the huge amount of damages being claimed. And except for the receipts of payment for the attorney's fee no other piece of evidence was submitted to merit the claim for counter-claim.

**Rule 17 Section 4 in relation to Rule 18 Section 10, provides,
Rule 17 Dismissal of Actions**

Section 4. Dismissal of counterclaim, cross-claim, or third-party complaint. — The provisions of this Rule shall apply to the dismissal of any counterclaim, cross-claim, or third-party complaint. A voluntary dismissal by the claimant by notice as in section 1 of this Rule, shall be made before a responsive pleading or a motion for summary judgment is served or, *if there is none, before the introduction of evidence at the trial or hearing. (4n)*

In connection to the above provision, it was explained in AIDA PADILLA vs. GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, that if the complaint is dismissed for lack of jurisdiction over the subject matter, which is in effect dismissing the cause of action, the counter-claim must be adjudicated on the merits and supported by evidence, thus,

"Since petitioner's counterclaim is compulsory in nature and its cause of action survives that of the dismissal of respondent's

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complaint, then it should be resolved based on its own merits and evidentiary support. (Additional emphasis supplied.)".³

To reiterate, after the pre-trial was terminated, counsel for the plaintiff opted to submit the complaint for judgement, joined by the counsel for defendants, who did not manifest any intention to adjudicate and present evidence to support the counter-claims of the defendants. Consequently, this Court is constrained to dismiss the same. Nevertheless, the defendants are not precluded to file a separate civil action for damages.

Further, the claim for attorney's fees is also dismissed. Just like the counter-claim, it has to be proven and adjudicated. As a general rule, attorney's fees cannot be recovered, except under those instances provided under Article 2208 of the Civil Code.

In the recent decision of the Supreme Court, entitled, ARTURO A. DACQUEL VS. SPOUSES ERNESTO SOTELO AND FLORA DACQUELSOTELO, it was held,

"ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, *cannot be recovered*, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

³ AIDA PADILLA, vs. GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, FILMAL REALTY CORPORATION, DELFIN S. LEE and DEXTER L. LEE, G.R. No. 207376, August 6, 2014.

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The Court explained the duality of attorney's fees in *Benedicto v. Villaflores*:

Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. Being the exception rather than the rule, an award of attorney's fees requires compelling reason before it may be granted. Parties still are allowed to stipulate on it beforehand. In the absence of any agreement, however, factual, legal, and equitable justification must be established to avoid speculation and conjecture surrounding the grant of attorney's fees by the courts. (Emphasis supplied)

While the CA declared that petitioner's acts forced respondents-spouses to litigate, records show scant reason to consider the case within the said exception cited under Article 2208. ***Even when a claimant is compelled to bring his cause to court or incur expenses to protect his rights, attorney's fees still may not be awarded as part of damages where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.*** (Emphasis supplied)

No such bad faith was proven against petitioner. On the contrary, both parties were impelled by the honest belief that their respective actions were justified. The entire legal ruckus was sparked by a series of undocumented transactions over the subject property, driving both parties into deeper misunderstandings that ended up too complicated and far too late to be clarified. Yet, in the records, both petitioner and respondents-spouses appeared to be merely in pursuit of their own interests. Respondents-spouses' victory should not earn petitioner an automatic label of bad faith and a correlative award of attorney's fees."⁴

⁴ ARTURO A. DACQUEL VS. SPOUSES ERNESTO SOTELO AND FLORA DACQUELSOTELO, REPRESENTED BY THEIR ATTORNEY-IN-FACT, IMELDA SOTELO, G.R. No. 203946, August 04, 2021

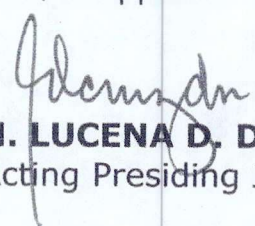
for

All told, the instant complaint is dismissed for lack of jurisdiction on the issue or subject matter, and the claim for damages and attorney's fees by the defendants are likewise dismissed, WITHOUT PREJUDICE, for lack of basis.

WHEREFORE, PREMISES CONSIDERED, the complaint for "Annulment of Deed of Absolute Sale and Cancellation of TCT No. 065-2012000117, its derivative titles: TCT No. 2014-000001, TCT No. 2014-000002, TCT No. 2014-000003, TCT No. 2014-000004, filed against ROSIE HEREDERO, the heirs of the late NESTOR HEREDERO namely: ROSIE HEREDERO, NIA MARIE HEREDERO, MARJORIE HEREDERO, RICKY HEREDERO, MARIE CECILIA BAHUNSUA, MARIE GRACE TORREMONIA, SHERRIE HEREDERO MICHELLE HEREDERO, and REGISTER OF DEEDS OF PALAWAN and DENR-Provincial Environment and Natural Resources Office, is hereby DISMISSED; and the claim for damages and attorney's fees by the defendants are likewise DISMISSED for lack of basis, **WITHOUT PREJUDICE.**

IT IS SO ORDERED.

This 8th day of September, 2022, El Nido, Palawan, Philippines.


HON. LUCENA D. DACUAN
Acting Presiding Judge

Copy Furnished:

- 1) ATTY. JOEL TAN
- 2) ATTY. LIEZEL L. ZABANAL-ABIA
- 3) SPS. LEONIDES & YOLINDA ECHAGUE
- 4) ROSIE HEREDERO, ET AL.,
- 5) REGISTER OF DEEDS OF PALAWAN
- 6) DENR - PENRO

LDD
