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"(c) This Section shall apply where the employee retires at the age of sixty (60) years or older."

While Article 288 of the Labor Code does not fix the age of retirement, the implementing rules provide that, in the absence of any collective bargaining agreement or other employment contract providing for retirement, "an employee *may* be retired upon reaching the age of sixty (60) years." Evidently, the implementing rules authorize the employer to retire its employees at the age of sixty years.

The company contends that article 288 cannot be applied to this case because no law, collective bargaining agreement or *bona fide* retirement plan justify the award of retirement benefits to Velasquez; that its mere approval of his application did not render it liable to pay retirement benefits to him and that, alternatively, his retirement benefits should be computed only from November 1, 1974, when the Labor Code took effect, and should not be retroactive as to 1953 when he started working for the company.

I vote for the affirmance of the award of retirement benefits on the basis of the Termination Pay Law because such an award is an act of social justice which in the case of the laborers means compassionate justice or an implementation of the policy that those who have less in life should have more in law.

FIRST DIVISION

[G.R. No. L-50471. June 29, 1979]

JULIO SALACUP, *petitioner, vs.* **HON. TOMAS P. MADDELA, JR. and FILIPINAS MILLS, INC.,** *respondents.*

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SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF COMPLAINT; *LIS PENDENS* AS A GROUND; REQUISITES.**— The requisites for *lis pendens* as a ground for dismissal of a complaint are: 1) Identity of parties or at least such as representing the same interests in both actions; 2) Identity of rights asserted and prayed for, the relief being founded on the same facts; and 3) The identity in both cases is such that the judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. Clearly, all these requisites are present in the two cases involved herein.

2. **ID.; ID.; ID.; ID.; REQUISITES OF *LIS PENDENS* PRESENT IN CASE AT BAR.**— Firstly, in Civil Case No. III-194 and Civil Case No. 115997, the parties are the same for they are merely suing each other. Although in the latter case, Ben Tan is not a party therein, he was made a party in the first case as a representative of respondent. Secondly, in the first case, petitioner prays for the collection of the overpayment paid for the rice thresher to the respondent, while in the second case, respondent asks for the undelivered cavans of *palay* as part of the purchase price of the rice thresher. The identity of rights asserted and prayed for, is thus established, which shows that the relief is founded on the same facts. And thirdly, with the identity of the cases as shown above, a judgment that may be rendered in the first case would be determinative of the rights of the parties concerned and thus, it would be *res judicata* to the second case. Patently, Civil Case No. III-194 was filed on April 5, 1976, very much ahead of the filing of Civil Case No. 115997 on June 7, 1978. When the latter case was filed with the Court of First Instance of Manila, the former filed with the Court of First Instance of Isabela was already pending. It was an action between the same parties for the same cause which should bar the later case. The lower court, therefore, erred in not granting the motion to dismiss.

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DECISION

DE CASTRO, *J.*:

A special civil action of *certiorari* with preliminary injunction wherein the petitioner prays that this Court:

"1. Issues an Order requiring the respondents to answer this petition;

"2. After hearing, nullifies the Orders of the respondent Judge denying petitioner's Motion to Dismiss and denying the Motion for Reconsideration;

"3. Allows the petitioner his cost;

"4. Issues, before this petition can be heard, a Writ of Preliminary Injunction forthwith restraining the respondent Judge from proceeding or trying the case; and

"5. Grants to the petitioner such other reliefs and remedies which are just and equitable in the premises."[1]

On December 12, 1973, a contract was executed between respondent Filipinas Mills Inc. and petitioner Julio Salacup whereby the former agreed to sell one rice thresher with complete accessories to petitioner in exchange of the quantity of *palay*. As to the consideration, respondent claims that the purchase price is to be paid in the form of ₱1,500 cavans of *palay* at 50 kilos per sack at the rate of ₱1.10 a kilo or as computed, ₱82,500. On the other hand, petitioner asserts that the prestation as to the price is ₱45,000 payable in *palay*.

The terms of payment as agreed upon by both parties are as follows:

a. 200 cavans of *palay*, upon delivery of the thresher but not later than January 15, 1974;

b. 500 cavans of *palay* on February 15, 1974; and

c. 800 cavans of *palay* on or before March 15, 1974.

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[1] Page 3, Complaint; Page 4, *Rollo*.

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On April 5, 1976, petitioner filed a complaint against respondent for the recovery of the overpayment paid by the petitioner for the rice thresher with the Court of First Instance of Isabela, Branch III, docketed as Civil Case No. III-194, entitled "*Julio Salacup, plaintiff, versus Ben Tan, representing Filipinas Mills Incorporated, defendants*." In the complaint, petitioner avers that he delivered 1,058 cavans valued at ₱51,557. The price of the rice thresher is only ₱45,000 and therefore, there is an overpayment in the amount of ₱6,557.

On June 7, 1978, respondent also filed a complaint for breach of contract and/or collection of the undelivered 442 cavans of *palay* or its value, ₱24,310 with the Court of First Instance of Manila, Branch XXXIV docketed as Civil Case No. 115997, entitled "*Filipinas Mills, Inc. plaintiff, versus Julio Salacup, defendant.*" In that complaint, respondent asserts that petitioner delivered only 1,058 cavans out of 1,500 cavans of *palay* thereby, leaving a balance of 442 cavans, under the same contract previously adverted to.

A motion to dismiss Civil Case No. 115997 was filed by petitioner on the ground that there is another action pending between the same parties for the same cause of action before the Court of First Instance of Isabela, Branch III. An opposition to the motion was filed by respondent on July 28, 1978 alleging that the pendency of a case presupposes a valid service of summons and copy of the complaint upon the defendant, and that no valid service of summons and copy of the complaint have been served upon it.

On October 3, 1978, respondent Judge issued an order which reads:

"This is a Motion to Dismiss filed by the defendant thru counsel, on the ground of *lis pendens*. Plaintiff filed its opposition to said Motion.

"After a careful consideration of the foregoing, the Court finds the opposition well taken, and on the grounds stated therein, the Court hereby denies the Motion to Dismiss filed by the defendant.

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"The defendant is hereby required to file his Answer to the Complaint within fifteen (15) days from receipt hereof."[2]

A motion for reconsideration was filed by petitioner on January 4, 1979 followed by an opposition to motion for reconsideration filed by respondent on February 13, 1979. Respondent Judge denied the motion for reconsideration on March 9, 1979.

Unable to obtain a reconsideration, the petitioner filed this instant petition with this Court.

On May 16, 1979, this Court issued a temporary restraining order enjoining respondent Judge from proceeding with or trying Civil Case No. 115997.[3]

The only issue raised before Us is whether or not there is another action pending between the same parties for the same cause in the Court of First Instance of Isabela, Branch III, within the meaning of Section 1, paragraph (e) of Rule 16 of the Rules of Court enumerating grounds for a motion to dismiss.

The requisites for *lis pendens* as a ground for dismissal of a complaint are: 1) Identity of parties or at least such as representing the same interests in both actions; 2) Identity of rights asserted and prayed for, the relief being founded on the same facts; and 3) The identity in both cases is such that the judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[4] Clearly, all these requisites are present in the two cases involved herein.

Firstly, in Civil Case No. III-194 and Civil Case No. 115997, the parties are the same for they are merely suing each other. Although in the latter case, Ben Tan is not a party therein, he

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[2] Annex D to Petition, p. 18, *Rollo*.

[3] Page 27, *Rollo*.

[4] *Francisco v. Vda. de Blas*, L-5073, May 4, 1953; *Diana v. B.T.C.*, 49 O.G. 2238; *Alarcon v. Torres*, L-21656, March 31, 1967, 19 SCRA 706; 709; *Del Rosario v. Jacinto*, L-20340, September 10, 1965; *PAMBUSCO v. Ofemia*, 18 SCRA 407.

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was made a party in the first case as a representative of respondent.

Secondly, in the first case, petitioner prays for the collection of the overpayment paid for the rice thresher to the respondent, while in the second case, respondent asks for the undelivered cavans of *palay* as part of the purchase price of the rice thresher. The identity of rights asserted and prayed for, is thus established, which shows that the relief is founded on the same facts.

And thirdly, with the identity of the cases as shown above, a judgment that may be rendered in the first case would be determinative of the rights of the parties concerned and thus, it would be *res judicata* to the second case.

Respondent contends that *lis pendens* does not obtain here because pendency of a case presupposes a valid service of summons and a copy of the complaint upon the defendant. In the case at bar, respondent alleges that no valid service of summons and copy of the complaint have been served upon it.

We find no merit in this contention. Under Section 6, Rule 2 of the Rules of Court "a civil action is commenced by filing a complaint with the court." And as held by this Court in the case of *Pampanga Bus Company, Inc. vs. Ocfemia*:[5]

"The rule of *lis pendens* refers to another pending "action." An action starts only upon the filing of a complaint in court.

"The fact that when appellant brought the present case it did not know of the filing of a previous case against it by appellees, as it received the summons and a copy of the complaint only after it had filed its own action against them, is immaterial. Suffice it to state that the fact is, at the time it brought the present case, there was already another pending action between the same parties, seeking to assert identical rights with identical prayers for relief based on the same facts, the decision in which would be *res judicata* herein."

It was also held in the case of *Sotelo vs. Dizon, et al.*:[6]

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[5] 18 SCRA 407.

[6] 67 Phil. 573.

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"Under Section 389 of the Code of Civil Procedure, a civil action is deemed legally commenced from the date of the filing and docketing of the complaint with the clerk of Court of First Instance, without taking into account the issuance and service of the summons. Section 389 of the Code of Civil Procedure is taken from Section 405 of the California Code of Civil Procedure, and the Supreme Court of said State has so interpreted it in *Tinn vs. United States District Attorney* (148 Cal., 773); *Dowling vs. Comerford* (99 Cal., 204); *Ex parte* Fil Ki (79 Cal., 584); and *Nash vs. El Dorado County* (24 Fed. 252; 1 C.J., Sec. 403, pp. 1155, 1156)."

Patently, Civil Case No. III-194 was filed on April 5, 1976, very much ahead of the filing of Civil Case No. 115997 on June 7, 1978. When the latter case was filed with the Court of First Instance of Manila, the former filed with the Court of First Instance of Isabela was already pending. It was an action between the same parties for the same cause which should bar the later case. The lower court, therefore, erred in not granting the motion to dismiss.

WHEREFORE, the appealed orders of October 3, 1978 and March 9, 1979 are set aside, and it is ordered that Civil Case No. 115997 be as it is hereby dismissed, without prejudice to such counterclaim as private respondent may wish to interpose in Civil Case No. III-194 of the Court of First Instance of Isabela, Branch III.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.