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SECOND DIVISION

[G.R. No. 162927. March 6, 2007]

MARCELINO B. AGOY, as the Administrator of the then Don Santiago G. Manongdo, the Attorney-in-Fact of FRANCISCO M. SARABIA and GENEROSO T. PEREZ, SPS. RODOLFO S. FORONDA and MILAGROS D. FORONDA; JAIME PEREZ, all in their own behalf, likewise, in behalf/representation of OTHER BONA FIDE RESIDENTS/SIMILARLY SITUATED, TAXPAYERS, taken under 'class suit', their names are so numerous and shall be submitted in due time for judicial cognizance, *petitioners, vs.* **COURT OF APPEALS and PHILIPPINE NATIONAL BANK, in its own behalf and in behalf of PNB Management and Development Corporation, its supposed vendee, the Mega Prime Realty & Holdings, Inc., in Joint Venture with Sakura Realty and Development Corporation,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; CAUSE OF ACTION; TRIAL COURT'S DISMISSAL OF COMPLAINT FOR LACK OF CAUSE OF ACTION IS PROPER; NOT HAVING ANY RIGHT OVER THE LAND, PETITIONERS CANNOT QUESTION ITS SUBSEQUENT TRANSFERS.— We find that the trial court's dismissal of the complaint for lack of cause of action was proper. The nature of an action is determined by the material averments in the complaint and the character of the relief sought. The complaint must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action. A cause of action is the act or omission by which a party violates the right of another. Its essential elements are as follows: 1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created; 2. An obligation on the part of the named defendant to respect or not to violate such right; and 3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach

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of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. The first element is missing in the complaint. Petitioners have no right over the subject parcels of land. Petitioners themselves stated in their complaint that this Court, in G.R. No. 117177, denied their appeal of the Court of Appeals' decision in CA-G.R. SP. Case No. 25853, wherein their action to annul the title of private respondent's predecessors-in-interest was dismissed. This alone constitutes *res judicata* on the issue of ownership between petitioners and PNB. Besides, this Court has written *finis* to the issue of validity of *Titulo de Propriedad* No. 4136, from which petitioners purportedly derive their claim, and declared it null and void. Not having any right over the land, petitioners cannot question its subsequent transfers.

2. ID.; ID.; ID.; ID.; PETITIONER'S MOTION TO TERMINATE THE SERVICES OF PHILIPPINE NATIONAL BANK'S COUNSEL AND TO EXPUNGE ITS MOTION TO DISMISS FROM THE RECORD IS BASELESS.— Going to the second issue, Section 13 of the 1986 Revised Charter of the Philippine National Bank provides that PNB shall have its own legal department. The section is captioned as "*Legal Matters and Cases*" which implies that the legal department shall represent PNB in court. Besides, by virtue of the powers and functions of the Department of Justice provided in Section 10, Chapter 3, Title III of the Administrative Code, the OGCC is mandated to *act as the principal law office* of all the government-owned and controlled corporations. This means that the existing legal departments of the government-owned and controlled corporations are maintained separately and continue to perform their functions, and the OGCC shall exercise control and supervision over them. Hence, petitioners' separate motions to terminate the services of PNB's counsel and to expunge PNB's motion to dismiss from the record are baseless.

APPEARANCES OF COUNSEL

Eliseo M. Cruz for petitioners.

Eligio T. Petilla for PNB.

D E C I S I O N

QUISUMBING, *J.:*

Assailed in this petition for review are the Decision[1] dated September 12, 2003 and the Resolution[2] dated March 16, 2004 of the Court of Appeals in CA-G.R. SP No. 63923.

This petition appears to be one of the numerous attempts by petitioners to title several parcels of land in Quezon City by virtue of *Titulo de Propriedad* No. 4136, which has been declared by this Court as null and void. The antecedent facts of the case are as follows:

Sometime in 1911, the Tuason family filed a registration case covering 1,600 hectares of land in Sta. Mesa and Diliman, Quezon City. This was docketed as LRC No. 7681. Petitioners opposed the registration, claiming ownership by virtue of an alleged Composition Title in the name of the late Don Santiago G. Manongdo. They averred that said title was registered on January 12, 1893 at the Property Registry in Bulacan. On December 29, 1913, the Court of Land Registration ruled in favor of the Tuasons.[3] On July 8, 1914, the Tuasons registered the land with the Register of Deeds of Rizal and was issued Original Certificate of Title No. 735.[4]

In 1991, petitioners filed with the Court of Appeals an original action for annulment of judgment in LRC No. 7681, docketed as CA-G.R. SP. Case No. 25853. The appellate court dismissed the action for lack of merit and denied reconsideration. Petitioners elevated the case to this Court. It was docketed as G.R. No. 117177. However, this Court denied due course to the petition for late filing.

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[1] *Rollo*, pp. 48-58. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes concurring.

[2] *Id*. at 10.

[3] *Agoy v. Hon. Judge George*, CA-G.R. SP. Case No. 25853, May 28, 1993.

[4] *Rollo*, pp. 136-137.

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Through a series of legal transfers, Marcris Realty Corporation (MRC) acquired title to five portions of the property and was issued Transfer Certificates of Title (TCT) Nos. RT-81172 to 75 and 160470.[5] On February 12, 1980, MRC assigned to the National Investment and Development Corporation (NIDC), a subsidiary of Philippine National Bank (PNB), all of its shares of stock and a 1,793.10 square meter parcel of land. By virtue of the assignment, NIDC acquired all the assets of MRC.[6]

The five parcels of land were transferred from one subsidiary of PNB to another until these were finally assigned to the Management and Development Corporation (MADECOR). In view of the assignment, the Register of Deeds of Quezon City cancelled TCT Nos. RT-81172 to 75 and issued TCT Nos. 87881 to 84 in the name of MADECOR.[7]

On September 27, 1996, PNB sold all its stockholdings in MADECOR, including the land covered by TCT Nos. 87881 to 84 and 160470, to Mega Prime Realty and Holdings, Inc.[8]

On August 17, 1999, petitioners filed a complaint (for annulment of title) against PNB, MADECOR, Mega Prime, and the Register of Deeds of Quezon City, with the Regional Trial Court (RTC) of Quezon City, Branch 93. The case was docketed as Civil Case No. Q-99-38491. Petitioners averred that the period within which PNB can legally hold the five parcels of land ended on February 12, 1985, since it foreclosed the properties of MRC on February 12, 1980. They alleged that the transfer of the properties from PNB to MADECOR on May 18, 1988 circumvented the maximum holding period prescribed by Republic Act No. 337.[9]

The Land Registration Authority manifested that it did not issue the decree from which the questioned certificates of title

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[5] *Id*. at 190-205.

[6] *Id*. at 206-211.

[7] *Id*. at 218-238.

[8] *Id*. at 241-243.

[9] General Banking Act – AN ACT REGULATING BANKS AND BANKING INSTITUTIONS AND FOR OTHER PURPOSES, effective on January 3, 1949 and repealed on June 13, 2000.

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were derived, but it was the defunct General Land Registration Office that did. It further stated that the basis of petitioners' claim was *Titulo de Propriedad* No. 4136 which was already declared by this Court as null and void. For its part, PNB moved for the dismissal of the case for failure to state a cause of action and/or on the ground that the cause of action was barred by prior judgment.

On May 22, 2000, the RTC granted PNB's motion and dismissed the case.[10] Subsequently, it denied petitioners' separate motions for reconsideration and to terminate the legal services of PNB's private counsel as it should be represented by the Office of the Government Corporate Counsel (OGCC).[11] On December 1, 2000, the trial court denied petitioners' second motion for reconsideration.[12] On January 9, 2001, the RTC clarified that its December 1, 2000 decision resolved the second motion for reconsideration and held that the motion to resolve the second motion for reconsideration was already moot.[13]

Petitioners then filed a petition for *certiorari* with the Court of Appeals. However, the appellate court denied the petition for failure to show grave abuse of discretion on the part of the RTC. The Court of Appeals, likewise, denied reconsideration.

Petitioners now come before us raising the following issues:

1. WHETHER OR NOT THE RESPONDENT PHILIPPINE NATIONAL BANK AS AN INSTRUMENTALITY OF THE GOVERNMENT HAS ACTED [WITH] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DIVERTING PUBLIC FUND, EQUIVALENT [TO] UTILIZING THE SUBJECT PARCEL OF LAND IN QUESTION IN THE CASE AT BAR THAT WAS FORECLOSED ON FEBRUARY 12, 1980 AS AN EQUITY IN THE REGISTRATION OF ITS SO-CALLED

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[10] *Rollo*, pp. 106-107.

[11] *Id.* at 108-109.

[12] *Id.* at 110.

[13] *Id.* at 105.

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SUBSIDIARY CORPORATION, THE PNB MANAGEMENT AND DEVELOPMENT CORPORATION, UNDER THE CORPORATION CODE (B.P. 68) ON FEBRUARY 6, 1989 WITHOUT NECESSARILY VIOLATING THE PROVISIONS PRESCRIBED UNDER SEC. 25 (d) OF THE GENERAL BANKING ACT (R.A. 337), AS AMENDED;

2. WHETHER OR NOT THE REGISTRATION ON FEBRUARY 6, 1989 OF THE PNB MANAGEMENT AND DEVELOPMENT CORPORATION BY THE PHILIPPINE NATIONAL BANK WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER S.E.C. REG. NO. 159753 AS ITS SO-CALLED SUBSIDIARY CORPORATION COULD BE CONSIDERED ILLEGAL PER SE, MARKED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;

3. WHETHER OR NOT THE PHILIPPINE NATIONAL BANK HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR [EXCESS] OF JURISDICTION [IN] ITS PRIVATIZATION ON MAY 27, 1998 WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER S.E.C. REG. NO. AS096-005555 BASED ON EXECUTIVE ORDER NO. 80, ISSUED ON DECEMBER 3, 1986, AMOUNTING TO NULLITY, AND ON THE OTHER HAND, COULD BE REPRESENTED BY THE OFFICE OF THE GOVERNMENT COUNSEL (OGCC) AS ITS PRINCIPAL COUNSEL IN THE CASE AT BAR.[14]

We note that these are not the same issues passed upon by the Court of Appeals. Before the Court of Appeals, petitioners raised only the issues of (a) whether the trial court properly disposed of the case, and (b) whether PNB could be legally represented by its legal department instead of the OGCC. A party cannot raise new issues or change his theory on appeal.[15] Thus, we shall address only two proper issues: (1) Did the trial court properly dismiss the complaint? and (2) Does PNB have to be represented by the OGCC?

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[14] *Id*. at 38.

[15] *Del Rosario v. Bonga*, G.R. No. 136308, January 23, 2001, 350 SCRA 101, 108.

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Petitioners reiterate their assertion that the registration by PNB, through its subsidiary MADECOR, of the five parcels of land should be annulled because PNB's right to hold the properties prescribed on February 12, 1985. They claim that, instead of resolving the controversy, the trial court merely denied the complaint without resolving their motion to strike out the entire copy of the motion to dismiss. They maintain that the motion to dismiss was without any force and effect since it was filed, not by the OGCC, but by PNB's own legal department.

PNB counters that petitioners failed to establish that the trial court gravely abused its discretion when it dismissed the complaint. It maintains that an order of dismissal is a final order, which is subject to appeal and not a proper subject of *certiorari*. PNB adds that the present petition raises questions of fact which are not proper in a petition for review.

On the first issue, we find that the trial court's dismissal of the complaint for lack of cause of action was proper. The nature of an action is determined by the material averments in the complaint and the character of the relief sought. The complaint must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action.[16] A cause of action is the act or omission by which a party violates the right of another.[17] Its essential elements are as follows:

1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

2. An obligation on the part of the named defendant to respect or not to violate such right; and

3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[18]

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[16] *Jimenez, Jr. v. Jordana*, G.R. No. 152526, November 25, 2004, 444 SCRA 250, 259-260.

[17] 1997 RULES OF CIVIL PROCEDURE, Rule 2, Section 2.

[18] *Swagman Hotels and Travel, Inc. v. Court of Appeals*, G.R. No. 161135, April 8, 2005, 455 SCRA 175, 183.

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The first element is missing in the complaint. Petitioners have no right over the subject parcels of land. Petitioners themselves stated in their complaint that this Court, in G.R. No. 117177, denied their appeal of the Court of Appeals' decision in CA-G.R. SP. Case No. 25853, wherein their action to annul the title of private respondent's predecessors-in-interest was dismissed. This alone constitutes *res judicata* on the issue of ownership between petitioners and PNB. Besides, this Court has written *finis* to the issue of validity of *Titulo de Propriedad* No. 4136, from which petitioners purportedly derive their claim, and declared it null and void.[19] Not having any right over the land, petitioners cannot question its subsequent transfers.

In their attempt to cloud the issues, petitioners assail the incorporation of MADECOR and the privatization of PNB, but these are improper subjects in a case for annulment of title and are impertinent to the issues at hand.

Going to the second issue, Section 13[20] of the 1986 Revised Charter of the Philippine National Bank[21] provides that PNB shall have its own legal department. The section is captioned as "*Legal Matters and Cases*" which implies that the legal department shall represent PNB in court. Besides, by virtue of the powers and functions of the Department of Justice provided in Section 10,[22] Chapter 3, Title III of the Administrative

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[19] *See Quezon Province v. Marte*, G.R. No. 139274, October 23, 2001, 368 SCRA 145, 153; *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals*, G.R. Nos. 103727 & 106496, December 18, 1996, 265 SCRA 733, 767.

[20] SEC. 13. *Legal Matters and Cases*. – The Bank shall have its own Legal Department, the head of which shall be appointed by the Board of Directors of the Bank upon recommendation of the President of the Bank.

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[21] PROVIDING FOR THE 1986 REVISED CHARTER OF THE PHILIPPINE NATIONAL BANK (Ex. Order No. 80), effective on December 3, 1986.

[22] SEC. 10. *Office of the Government Corporate Counsel*. – The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and

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Code,[23] the OGCC is mandated to act as the principal law office of all the government-owned and controlled corporations. This means that the existing legal departments of the government-owned and controlled corporations are maintained separately and continue to perform their functions, and the OGCC shall exercise control and supervision over them. Hence, petitioners' separate motions to terminate the services of PNB's counsel and to expunge PNB's motion to dismiss from the record are baseless.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated September 12, 2003 and the Resolution dated March 16, 2004 of the Court of Appeals in CA-G.R. SP No. 63923 are hereby *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

The OGCC is authorized to receive the attorney's fees adjudged in favor of their client government-owned or controlled corporations, their subsidiaries/ other corporate offsprings and government acquired asset corporations. These attorney's fees shall accrue to a Special fund of the OGCC, and shall be deposited in an authorized government depository as a trust liability and shall be made available for expenditure without the need for a Cash Disbursement Ceiling, for purpose of upgrading facilities and equipment, granting of employees' incentive pay and other benefits, and defraying such other incentive expenses not provided for in the General Appropriations Act as may be determined by the Government Corporate Counsel.

[23] Executive Order No. 292, effective November 24, 1989.