Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SPECIFIED CONTRACTORS & DEVELOPMENT, INC., AND SPOUSES ARCHITECT ENRIQUE O. OLONAN AND CECILIA R. OLONAN,	**G.R. No. 212472**
Petitioners,	Present:
	SERENO, *C.J.*, *Chairperson*,
	LEONARDO-DE CASTRO,
	DEL CASTILLO,
	JARDELEZA, and
- versus -	TIJAM, *JJ.*
JOSE A. POBOCAN,	Promulgated:
Respondent.	JAN 11 2018

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DECISION

TIJAM, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 urges this Court to reverse and set aside the November 27, 2013 Decision[2] and April 28, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 99994, and to affirm instead the June 4, 2012 Order[4] of the Regional Trial Court (RTC) of Quezon City, Branch 92, in Civil Case No. Q-11-70338. The court *a quo* had granted the Motion to Dismiss[5] of Specified Contractors & Development Inc. (Specified Contractors), and Spouses Architect Enrique

[1] *Rollo*, pp. 11-38.
[2] Id. at 52-58, penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes.
[3] Id. at 61-62.
[4] Id. at 168-174, penned by Presiding Judge Eleuterio L. Bathan.
[5] Id. at 77-83.

O. Olonan and Cecilia R. Olonan (collectively referred to as petitioners), thereby dismissing the action for specific performance filed by respondent Jose A. Pobocan. The dismissal of the case was subsequently set aside by the CA in the assailed decision and resolution.

It is undisputed that respondent was in the employ of Specified Contractors until his retirement sometime in March 2011. His last position was president of Specified Contractors and its subsidiary, Starland Properties Inc., as well as executive assistant of its other subsidiaries and affiliates.

Architect Olonan allegedly[6] agreed to give respondent one (1) unit for every building Specified Contractors were able to construct as part of respondent's compensation package to entice him to stay with the company. Two (2) of these projects that Specified Contractors and respondent were able to build were the Xavierville Square Condominium in Quezon City and the Sunrise Holiday Mansion Bldg. I in Alfonso, Cavite. Pursuant to the alleged oral agreement, Specified Contractors supposedly ceded, assigned and transferred Unit 708 of Xavierville Square Condominium and Unit 208 of Sunrise Holiday Mansion Bldg. I (subject units) in favor of respondent.

In a March 14, 2011 letter[7] addressed to petitioner Architect Enrique Olonan as chairman of Specified Contractors, respondent requested the execution of Deeds of Assignment or Deeds of Sale over the subject units in his favor, along with various other benefits, in view of his impending retirement on March 19, 2011.

When respondent's demand was unheeded, he filed a Complaint[8] on November 21, 2011 before the RTC of Quezon City praying that petitioners be ordered to execute and deliver the appropriate deeds of conveyance and to pay moral and exemplary damages, as well as attorney's fees.

On January 17, 2012, petitioners, instead of filing an answer, interposed a Motion to Dismiss[9] denying the existence of the alleged oral agreement. They argued that, even assuming *arguendo* that there was such an oral agreement, the alleged contract is unenforceable for being in violation of the statute of frauds, nor was there any written document, note or memorandum showing that the subject units have in fact been ceded, assigned or transferred to respondent. Moreover, assuming again that said agreement existed, the cause of action had long prescribed because the alleged agreements were supposedly entered into in 1994 and 1999 as

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[6] Infra.
[7] *Rollo*, pp. 74-75.
[8] Id. at 67-69.
[9] Id. at 77-83.

indicated in respondent's March 14, 2011 demand letter, *supra,* annexed to the complaint.

The RTC, in granting[10] the motion, dismissed the respondent's complaint in its June 4, 2012 Order. While the RTC disagreed with petitioners that the action had already prescribed under Articles 1144[11] and 1145[12] of the New Civil Code, by reasoning that the complaint is in the nature of a real action which prescribes after 30 years conformably with Article 1141[13], it nonetheless agreed that the alleged agreement should have been put into writing, and that such written note, memorandum or agreement should have been attached as actionable documents to respondent's complaint.

On appeal, the CA reversed[14] the RTC's June 4, 2012 Order, reasoning that the dismissal of respondent's complaint, anchored on the violation of the statute of frauds, is unwarranted since the rule applies only to executory and not to completed or partially consummated contracts. According to the CA, there was allegedly partial performance of the alleged obligation based on: (1) the respondent's possession of the subject units; (2) the respondent's payment of condominium dues and realty tax for Unit 708 Xavierville Square Condominium; (3) the endorsement by petitioners of furniture/equipment for Unit 208 Sunrise Holiday Mansion I; and (4) that shares on the rental from Unit 208 Sunrise Holiday Mansion I were allegedly received by the respondent and deducted from his monthly balance on the furniture/equipment account.

Petitioners countered that while there is no dispute that respondent had been occupying Unit 708 – previously Unit 803 – of Xavierville Square Condominium, this was merely out of tolerance in view of respondent's then position as president of the company and without surrender of ownership. Petitioners also insisted that Unit 208 of Sunrise Holiday Mansion I continues to be under their possession and control. Thus, finding that the motion to dismiss was predicated on disputable grounds, the CA declared in its assailed decision that a trial on the merits is necessary to determine once and for all the nature of the respondent's possession of the subject units.

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[10] Id. at 173-174.

[11] **ART. 1144.** The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

[12] **ART. 1145.** The following actions must be commenced within six years:

(1) Upon an oral contract;
(2) Upon a quasi-contract.

[13] **ART. 1141.** Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

[14] *Rollo*, at p. 58.

Aggrieved, petitioners sought reconsideration of the CA decision, but were unsuccessful. Hence, the present petition raising three issues:

1. Whether or not the RTC had jurisdiction over the respondent's complaint considering that the allegations therein invoked a right over the subject condominium units as part of his compensation package, thus a claim arising out of an employer-employee relationship cognizable by the labor arbiter;[15]
2. Whether or not the respondent's cause of action had already prescribed;[16] and,
3. Whether or not the action was barred by the statute of frauds.[17]

Resolution of the foregoing issues calls for an examination of the allegations in the complaint and the nature of the action instituted by respondent. As will be discussed later, there is merit in petitioners' insistence that respondent's right of action was already barred by the statute of limitations.

What determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.[18] In his complaint, respondent claimed that petitioners promised to convey to him the subject units to entice him to stay with their company. From this, respondent prayed that petitioners be compelled to perform their part of the alleged oral agreement. The objective of the suit is to compel petitioners to perform an act, specifically, to execute written instruments pursuant to a previous oral contract. Notably, the respondent does not claim ownership of, nor title to, the subject properties.

Not all actions involving real property are real actions. In *Spouses Saraza, et al. v. Francisco*[19], it was clarified that:

> x x x Although the end result of the respondent's claim was the transfer of the subject property to his name, the suit was still essentially for specific performance, a personal action, because it sought Fernando's execution of a deed of absolute sale based on a contract which he had previously made.

Similarly, that the end result would be the transfer of the subject units to respondent's name in the event that his suit is decided in his favor is "an anticipated consequence and beyond the cause for which the action [for

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[15] Id. at 21-23.
[16] Id. at 23-24.
[17] Id. at 33.
[18] *Nilo Padre v. Fructosa Badillo, Fedila Badillo, Presentacion Caballes, et al.*, 655 Phil. 52, 64 (2011).
[19] 722 Phil. 346, 357 (2013).

specific performance with damages] was instituted."[20] Had respondent's action proceeded to trial, the crux of the controversy would have been the existence or non-existence of the alleged oral contract from which would flow respondent's alleged right to compel petitioners to execute deeds of conveyance. The transfer of property sought by respondent is but incidental to or an offshoot of the determination of whether or not there is indeed, to begin with, an agreement to convey the properties in exchange for services rendered.

Cabutihan v. Landcenter Construction & Development Corporation[21] explains thus:

> A close scrutiny of *National Steel* and *Ruiz* reveals that the prayers for the execution of a Deed of Sale were not in any way connected to a contract, like the Undertaking in this case. Hence, even if there were prayers for the execution of a deed of sale, the actions filed in the said cases were not for specific performance.
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> In the present case, petitioner seeks payment of her services in accordance with the undertaking the parties signed.

It is axiomatic that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein.[22] We therefore find that respondent correctly designated his complaint as one for specific performance consistent with his allegations and prayer therein. Accordingly, respondent's suit is one that is incapable of pecuniary estimation and indeed cognizable by the RTC of Quezon City where both parties reside. As stated in *Surviving Heirs of Alfredo R. Bautista v. Lindo*:[23]

> Settled jurisprudence considers some civil actions as incapable of pecuniary estimation, viz:
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> 1. Actions for specific performance;

While the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.[24] In this case, petitioners' Motion

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[20] Id.
[21] 432 Phil. 927, 938 (2002).
[22] *Russell v. Vestil*, 364 Phil. 392, 401 (1999).
[23] 728 Phil. 630, 638 (2014).
[24] *National Steel Corporation v. Court of Appeals*, 362 Phil. 150, 160 (1999).

to Dismiss, Reply[25] to the opposition on the motion, and Sur-rejoinder[26] only invoked the defenses of statute of frauds and prescription before the RTC. It was only after the CA reversed the RTC's grant of the motion to dismiss that petitioners raised for the first time the issue of jurisdiction in their Motion for Reconsideration.[27] Clearly, petitioners are estopped from raising this issue after actively taking part in the proceedings before the RTC, obtaining a favorable ruling, and then making an issue of it only after the CA reversed the RTC's order.

Even if this Court were to entertain the petitioners' belated assertion that jurisdiction belongs to the labor arbiter as this case involves a claim arising from an employer-employee relationship, reliance by petitioners on *Domondon v. NLRC*[28] is misplaced. In *Domondon*, the existence of the agreement on the transfer of car-ownership was not in issue but rather, the entitlement of a former employee to his entire monetary claims against a former employer, considering that the said employee had not paid the balance of the purchase price of a company car which the employee opted to retain. In the present case, the existence of the alleged oral agreement, from which would flow the right to compel performance, is in issue.

As the Court has ascertained that the present suit is essentially for specific performance – a personal action – over which the court *a quo* had jurisdiction, it was therefore erroneous for it to have treated the complaint as a real action which prescribes after 30 years under Article 1141 of the New Civil Code. In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages.[29] Real actions, on the other hand, are those affecting title to or possession of real property, or interest therein.[30] As a personal action based upon an oral contract, Article 1145 providing a prescriptive period of six years applies in this case instead. The shorter period provided by law to institute an action based on an oral contract is due to the frailty of human memory. Nothing prevented the parties from reducing the alleged oral agreement into writing, stipulating the same in a contract of employment or partnership, or even mentioning the same in an office memorandum early on.

While the respondent's complaint was ingeniously silent as to when the alleged oral agreement came about, his March 14, 2011 demand letter annexed to his complaint categorically cites the year 1994 as when he and Architect Olonan allegedly had an oral agreement to become "industrial partners" for which he would be given a unit from every building they constructed. From this, Unit 208 of Sunrise Holiday Mansion I was

[25] *Rollo*, pp. 88-94.
[26] Id. at 116-121.
[27] Id. at 196-206.
[28] 508 Phil. 541 (2005).
[29] *Marcos-Araneta, et al., v. Court of Appeals, et al.*, 585 Phil. 58 (2008).
[30] Id.

allegedly assigned to him. Then he went on to cite his resignation in October of 1997 and his re-employment with the company on December 1, 1999 for which he was allegedly given Unit 803 of the Xavierville Square Condominium, substituted later on by Unit 708 thereof.

The complaint for specific performance was instituted on November 21, 2011, or 17 years from the oral agreement of 1994 and almost 12 years after the December 1, 1999 oral agreement. Thus, the respondent's action upon an oral contract was filed beyond the six-year period within which he should have instituted the same.

Respondent argued that the prescriptive period should not be counted from 1994 because the condominium units were not yet in existence at that time, and that the obligation would have arisen after the units were completed and ready for occupancy. Article 1347[31] of the New Civil Code is, however, clear that future things may be the object of a contract. This is the reason why real estate developers engage in pre-selling activities. But even if we were to entertain respondent's view, his right of action would still be barred by the statute of limitations.

Condominium Certificate of Title (CCT) No. N-18347[32] for Unit 708 of Xavierville Square Condominium, copy of which was annexed to the complaint, was issued on September 11, 1997 or more than 13 years before respondent's March 14, 2011 demand letter. CCT No. CT-613[33] for Unit 208 of Sunrise Holiday Mansion Building I, also annexed to the complaint, was issued on March 12, 1996 or 14 years before respondent's March 14, 2011 demand letter. Indubitably, in view of the instant suit for specific performance being a personal action founded upon an oral contract which must be brought within six years from the accrual of the right, prescription had already set in.

Inasmuch as the complaint should have been dismissed by the RTC on the ground of prescription, which fact is apparent from the complaint and its annexes, it is no longer necessary to delve into the applicability of the statute of frauds.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Court of Appeals' November 27, 2013 Decision and April 28, 2014 Resolution in CA-G.R. CV No. 99994 are **REVERSED** and **SET ASIDE**. We sustain the dismissal of Civil Case No. Q-11-70338, but on the ground that the action for specific performance had already prescribed.

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[31] **ART. 1347.** All things which are not outside the commerce of men, including future things, may be the object of a contract.

[32] *Rollo*, p. 70.

[33] Id. at 71.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

MARIA LOURDES P.A. SERENO
Chief Justice
Chairperson

TERESITA LEONARDO-DE CASTRO
Associate Justice

MARIANO DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice