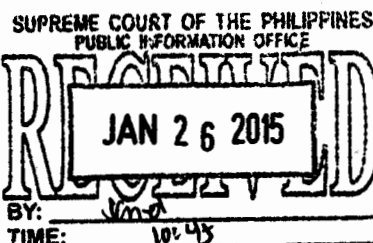




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **December 3, 2014**, which reads as follows:

“G.R. No. 197418 (ALVAREZ, 2LT Nestorio Mayo, ANTOLIN, 2LT Eduardo Carreon, APONGOL, 2LT Alfredo Cajimat, ARRIOLA, 2LT Edilberto Dimayuga, ASECIO, 2LT Enrico, Jr. Eduarte, ASUNCION, 2LT Eduardo S., BADONG, MSGT Rolando Palencia, BAGAYAS, 2LT Rodolfo Casinio, BENOSA, 2LT Nixon Baldonado, BERMAS, 2LT Genaro Base, BERMAS, 2LT Jesus Republica, BERNAL, 2LT Jose, Jr. Buhayo, BERTULDO, 2LT Isagani Dalida, BOLO, 2LT Jose Botor, BORJA, 2LT Teodoro Bagayas, BUYCO, Betty G., CAAMPUED, 2LT Froilan Carranza, CARANTO, 2LT Bernardo Caranto, CATALAN, 2LT Joaquin Caritativo, DAGMAN, 2LT Florencio Safranca, DAOAS, 2LT Martin, Jr. Garnace, DELA RAMA, 2LT Pedro, Jr. Barrameda, DEOPITA, 2LT Antonio Guardilao, DICOLEN, Rogelio N., DIMAANO, 2LT Ricardo Rivera, EBREO, Ambrosito Aguila, ELEDA, 2LT Dante Hernandez, ESTACION, 2LT Leonardo Lainez, ESTRIVO, Nestor Insular, ESTUESTA, 2LT Leopoldo Mendoza, FABIA, 2LT Danilo Quitlong,* FABIAN, 2LT Joel Ilagan, FACIOLAN, 2LT Edgardo Oñas, FERNANDEZ, 2LT Severino Alcantara, FIRME, 2LT Silvino Mendoza, FLORES; Hermogenes Bautista, GARCIA, Warlito, Sr. Quinto, LACERNA, 2LT Policarpio, Jr. G., LAROZA, MSGT Simplicio, LATAG, 2LT Victorino Maquinto, MACARAEG, SSGT Jeremias C., MARINO, 2LT Rodrigo Joven, MILLARE, 2LT Benjamin B., MOJICA, 2LT Amado Erni, MONTEROLA, 2LT Hector Cachero, MORADA, 2LT Ruben R., MORALDE, Benjamin Villar, MORANTE, 2LT Dominador, Jr. Hernandez, NAVAL, 2LT Tony Quitlong, OCAMPO, 2LT Eduardo Mendoza, OGERIO, 2LT Reynaldo Tabios, PARUNGAO, 2LT Victor Salvador, RAPLIZA, 2LT Emma Brosas, REYES, 2LT Efren V., ROSENDO, 2LT Willard Gregorio, RUNAS, 2LT Alejandro Orpilla, SANIEL, MSGT Gonzalo Salvante, SANTOS, 2LT Leonardo Ventura, SENEDRIN, 2LT Raul San Vicente, SENOSA, 2LT Rufino Caramat, SIMEON, 2LT Primo Agcaoili, SOLOMON, 2LT Armando Banaag, STO. TOMAS, MSGT Jaime M., TABELINA, 2LT Rodolfo Madriaga,

* Records show that he was also referred to as Danilo Favia.

TAMBOGON, 2LT Jimmy, TIMPUG, 2LT Ruperto Nuguid, TUMBAGA, 2LT Honorio Marasigan, UBAO, MSGT Eugenio Tubillara, UROT, 2LT Samson Almonia, VELOSO, 2LT Manuel Tamares, VENTURA, Yolanda De Leon, VICEDO, 2LT Geronimo E., YRAOLA, 2LT Araceli Reyes, ZAFE, 2LT Juan, Jr., ZARA, 2LT Mario Sarmiento, MELO, 2LT Virgilio C., LEYRAN, 2LT Eladio, LAMPITOC, 2LT Elmer, LOMANANG, 2LT Ricardo, LIBATON, 2LT Felicito, NEGRIDO, MSGT Romulo, BINGCANG, 2LT Rolando, MELO, MSGT Glicerio, CASIMIRO, 2LT Rogelio, ORIBELLO, 2LT Jose (D), ORIBELLO, Mrs. Lilia, IBONES, 2LT Allan, OLMEDO, 2LT Joel, SOLOMON, 2LT Armando, TUMBAGA, 2LT Honorio, MANGUBAT, 2LT Melchor, ABUEL, 2LT Danilo, OCA, 2LT Mario, GUZMAN, 2LT Alejandro Jr., OTANES, 2LT Wilfredo, AQUINO, 2LT Alberto Glory, BALCITA, 2LT Arturo T., SANTOS, 2LT Freddie, MENTOY, 2LT Isabelo L., Apartment Duplex Occupants Assn., VAB, Pasay City, Inc., (ADOAI), as represented by Lt. Virgilio C. Melo (Ret.) vs. BASES CONVERSION AND DEVELOPMENT AUTHORITY, PAF HOUSING BOARD)

G.R. No. 197478 (ALFREDO C. APONGOL [deceased] vs. BASES CONVERSION AND DEVELOPMENT AUTHORITY). – For review is the Decision¹ dated September 30, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 107074 which annulled and set aside the Orders dated July 30, 2008² and November 6, 2008³ of the Regional Trial Court (RTC) of Pasay City, Branch 114, in SCA Case No. 05-0971-CFM denying the *Omnibus Motion to Dismiss and Dissolve the Writ of Preliminary Injunction* of Bases Conversion and Development Authority (BCDA).

The Antecedents

The petitioners are retired enlisted men/military personnel of the Philippine Air Force (PAF) and are among the approximately 192 families occupying the 2.5-hectare residential quarters inside the 53-hectare Villamor Airmen's Village in Pasay City (Airmen's Village). The petitioners leased their respective residential quarters while still in active service under individually executed contracts of occupancy with PAF, the owner and administrator of the village. The contracts of occupancy expressly provided, among others, that: (a) the occupants would pay the monthly rental; and (b) they would immediately vacate the units (or government quarters) upon their retirement, separation or discharge from the service.⁴

¹ Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring; *rollo* (G.R. No. 197418), pp. 86-101, *rollo* (G.R. No. 197478), pp. 29-44.

² Issued by Judge Edwin B. Ramizo; *rollo* (G.R. No. 197418), pp. 206-207, *rollo* (G.R. No. 197478), pp. 534-535.

³ *Rollo* (G.R. No. 197478), pp. 544-551.

⁴ *Id.* at 398-399.

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In 1992, the ownership and administration of the Airmen's Village was transferred from PAF to BCDA by virtue of Republic Act (R.A.) No. 7227 or the Bases Conversion and Development Act of 1992.

On January 23, 1995, a Memorandum of Agreement⁵ (MOA) was executed by BCDA, the National Housing Authority (NHA), the Department of National Defense (DND) and the local government of Pasay City for the development of the Airmen's Village for its eventual disposition to still unnamed and unspecified beneficiaries.

The PAF Housing Board, representing the Republic of the Philippines, filed a Complaint⁶ dated July 14, 1999 for unlawful detainer before the Metropolitan Trial Court (MeTC) of Pasay City, Branch 44, against retired soldiers Emmanuelito Basco, Hernando Languisan, Patrocinio Ares, Arturo Gobungin, Ludovico Valenzuela, Eugenio Ritualo, Elpidio Pacupac, Edgardo Taberna, Reynaldo Torres, Efren Hidalgo, Manolo Clave, Jose Gallaza, George Talaver, Alfredo Sinampaga (hereinafter collectively referred to as Basco group) and Roscoe Acosta (Acosta). The complaint was docketed as **Civil Case No. 799-99** and was anchored on PAF's claim that, pursuant to their individual contracts of occupancy, the foregoing servicemen are no longer entitled to occupy their living quarters upon their retirement.

The Basco group and Acosta asserted that, because of R.A. No. 7227, PAF can no longer evict them because it has ceased to be the owner of the Airmen's Village and thus their contracts of occupancy are no longer binding. They also claimed that they are among the beneficiaries of the MOA and hence they cannot be ejected from their living quarters.⁷

In a Decision⁸ dated March 13, 2000, the MeTC ruled in favor of PAF, thus:

WHEREFORE, judgment is hereby rendered in favor of plaintiff, Republic of the Philippines[,] herein represented by the Philippine Air Force (PAF) Housing Board, Armed Forces of the Philippines and against defendants SMSg Emmanuelito Basco (Ret), MSg Hernando Languisan (Ret), MSg Ludovico Valenzuela (Ret), MSg Eugenio Rituato (Ret), MSg Elpid[i]o Pacupac (Ret), MSg Edgardo Taberna (Ret), SMSg Reynaldo Torres (Ret), MSg Efren Hidalgo (Ret), MSg Jose Gallaza (Ret), MSg George Talaver (Ret), MSg Alfredo Sinampaga (Ret), MSg Patrocinio Ares (Ret), MSg [A]rturo Gobungin (Ret), MSg Manolo Clave (Ret), MSg Roscoe Acosta (Ret), hereby ordering the said defendants and all persons claiming rights under them to:

⁵ Id. at 433-440, *rollo* (G.R. No. 197418), pp. 376-383.

⁶ *Rollo* (G.R. No. 197478), pp. 389-396.

⁷ Id. at 413-414.

⁸ Issued by Judge Estrellita M. Paas; id. at 397-404.

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1. vacate the premises designated and occupied by them at the Airmen's Village, Villamor Air Base, Pasay City;
2. pay the amount of P3,000.00 each a month as the reasonable value for the use and occupation of the said quarters from the time of the filing of this case up to the time the defendants have finally vacated the same; and
3. pay the costs of suit.

SO ORDERED.⁹

On appeal, the RTC reversed the MeTC ruling.¹⁰ On further appeal to the CA, the MeTC decision was reinstated.¹¹ The matter reached this Court through a petition for review on *certiorari* docketed as G.R. No. 159634 which was, however, denied in a Resolution¹² dated November 27, 2003 for having been filed beyond the reglementary period.

On September 5, 2005, upon PAF's motion, a writ of execution¹³ was issued to implement the MeTC ruling which ordered the eviction of the Basco group and Acosta from the premises they were occupying.

On the apprehension that they might be similarly evicted, a petition for declaratory relief¹⁴ was filed on August 24, 2005 by similarly retired military servicemen Alfredo C. Apongol (Apongol), Amado Z. Mutyangpili, Silvino M. Firme (Firme) and Florante A. Hatulan (Apongol group) against PAF Housing Board of the Armed Forces of the Philippines (AFP), BCDA, NHA, the local government of Pasay City and the DND before the RTC. The petition was accompanied by an application for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction and was docketed as the herein **SCA Case No. 05-0971-CFM**.

An Amended/Supplemental Petition¹⁵ was thereafter filed impleading additional petitioners, namely: Rodrigo J. Marino, Danilo Favia (Favia), James Lagazo (Marino group), Apartment Duplex Occupants Association, Inc. (ADOAI), an association of over 190 retired PAF personnel, and the

⁹ Id. at 404.

¹⁰ Issued by Judge Francisco G. Mendiola; id. at 405-408. The Decision was rendered by the RTC of Pasay City, Branch 115, on April 11, 2001 and it disposed as follows:

"WHEREFORE, the Appeal is GRANTED. The Decision dated March 13, 2000 of the Presiding Judge, MTC, Branch 44, Pasay City is Reversed and the complaint is DISMISSED. SO ORDERED."

¹¹ Id. at 409-417. The appeal was docketed as CA-G.R. SP No. 64530 and the CA Decision which resolved the same was rendered on February 4, 2003 disposing as follows:

"WHEREFORE, premises considered, the appealed decision dated April 11, 2001 of the Regional Trial Court, Branch 115, Pasay City is hereby **REVERSED and SET ASIDE** and the decision dated March 13, 2000 of the Metropolitan Trial Court, Branch 44, Pasay City is **REINSTATED**.

SO ORDERED."

¹² Id. at 418.

¹³ Id. at 419-421.

¹⁴ Id. at 422-431.

¹⁵ Id. at 468-479, *rollo* (G.R. No. 197418), pp. 170-181.

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Basco group. The petition was also supplemented with the alternative causes of action for Injunction, Mandamus and Prohibition.

After several hearings on the prayer for injunctive writ or on September 22, 2005, the RTC issued a TRO effective for 20 days enjoining the PAF Housing Board of the AFP from evicting the petitioners in SCA Case No. 05-0971-CFM and padlocking their quarters.¹⁶

The petitioners in SCA Case No. 05-0971-CFM thereafter reiterated their application for a preliminary injunction through a *Very Urgent Motion (Re: Issuance of Writ of Preliminary Injunction)*¹⁷ filed on October 12, 2005 and then an *Extremely Very Urgent Motion for Preliminary Injunction*¹⁸ filed on September 12, 2007, claiming that the PAF Housing Board has continuously and systematically attacked them to facilitate their eviction from their living quarters. They also averred that they have just recently learned that there is an impending order from the higher officers of the chain of command of PAF to carry out the eviction by force on September 16, 2007. They asserted that they have a clear right to be protected from eviction being the recognized beneficiaries of the January 23, 1995 MOA executed by the BCDA, NHA, DND and the local government of Pasay City. They also submitted a copy of a Resolution dated October 28, 1999 in Commission on the Settlement of Land Problems (COSLAP) Case No. 98-352-B declaring that every bona fide occupant of the 2.5-hectare land in Airmen's Village is a beneficiary of the Villamor Airbase Socialized Housing Project and thus entitled to own the lots and quarters they inhabit. The resolution also enjoined the PAF from evicting any of such occupants.

In an Order¹⁹ dated October 16, 2007, the RTC held that, without necessarily prejudging the validity of the MOA, the Apongol, Basco and Marino groups and ADOAI had a clear legal right to occupy their living quarters and were thus entitled to a preliminary injunction upon their filing of an injunction bond in the amount of ₱100,000.00. Such finding was anchored on the abovementioned COSLAP resolution.

On April 15, 2008, BCDA filed the *Omnibus Motion to Dismiss and Dissolve the Writ of Preliminary Injunction*²⁰ (Omnibus Motion) arguing that the petition for declaratory relief did not present a justiciable controversy because it was instituted solely to frustrate or impede the execution of the final and executory decision of the MeTC in the unlawful detainer case which involved the same property. The cause of action advanced in the declaratory relief is the same defense raised in the unlawful detainer case, that is – the Apongol, Basco and Marino groups and ADOAI are the acknowledged and recognized beneficiaries of the MOA; the petition

¹⁶ Rollo (G.R. No. 197478), pp. 521-522.

¹⁷ Id. at 572, rollo (G.R. No. 197418), pp. 208-212.

¹⁸ Rollo (G.R. No. 197478), pp. 523-528.

¹⁹ Id. at 532-533, rollo (G.R. No. 197418), pp. 184-185.

²⁰ Rollo (G.R. No. 197418), pp. 186-202.

was filed to revive and litigate anew the discredited claim that they cannot be evicted from the housing quarters because they are beneficiaries of socialized housing of the NHA and that their act constitutes gross abuse of court processes which cannot be countenanced.

BCDA also disputed the petitioners' claim of clear legal right and argued that their living quarters are owned by the Republic of the Philippines and their right to stay thereat terminated upon their retirement or separation from service as expressly stipulated in their contracts of occupancy.

Ruling of the RTC

In its herein assailed Order²¹ dated July 30, 2008, the RTC denied the Omnibus Motion. The motion to dismiss was adjudged to have warranted outright denial for having been filed after an Answer. Rule 16, Section 1 of the Rules of Court mandates the filing of a motion to dismiss within the time for but before filing an answer to the complaint. BCDA, however, filed the motion to dismiss almost two months after the Answer was filed. No specific reason was stated for the denial of the motion to dissolve the writ of preliminary injunction.

BCDA moved for reconsideration arguing that under Rule 16, Section 1, *res judicata*, as a ground for dismissal, may be raised even after an answer has been filed. BCDA also averred that the parties and the issues in the petition for declaratory relief and the ejectment case were substantially identical and that the former was instituted to frustrate the final and executory judgment in the latter.²²

In its Order²³ dated November 6, 2008, the RTC denied reconsideration stressing that it is improper to resolve the issue of *res judicata* because it was not raised in, and hence, not passed upon by the court in resolving the Omnibus Motion. For the same reason, BCDA is deemed to have waived the ground of *res judicata* for failure to allege it in its Omnibus Motion. Under Rule 9, Section 1, all available objections shall be included in a motion attacking a pleading, order, judgment or proceeding otherwise they shall be deemed waived.

On December 2, 2008, BCDA filed its Answer²⁴ to the Petition for Declaratory Relief. Meanwhile on August 20, 2009, an Amended Complaint²⁵ for recovery of possession with damages was filed against the Apongol and Marino groups by the 520th Air Base Wing of the PAF before

²¹ Id. at 206-207, *rollo* (G.R. No. 197478), pp. 534-535.

²² *Rollo* (G.R. No. 197478), pp. 536-543.

²³ Id. at 544-551.

²⁴ Id. at 552-564.

²⁵ *Rollo* (G.R. No. 197418), pp. 256-284.

the MeTC of Pasay City, Branch 46, where it was docketed as Civil Case No. M-PSY-09-10093-CV.

Ruling of the CA

BCDA then sought recourse before the CA thru a petition for *certiorari*²⁶ imputing grave abuse of discretion to the RTC in denying its Omnibus Motion.

In its herein assailed Decision²⁷ dated September 30, 2010, the CA reversed the RTC orders on the ground that the right to material possession claimed by the Apongol, Marino and Basco groups and the ADOAI was already struck down in the unlawful detainer case. The CA also dismissed the petition for declaratory relief on the ground that it is barred by the prior judgment in the unlawful detainer case which involved substantially similar parties, subject matter and cause of action. The decretal portion of the CA decision read:

WHEREFORE, the instant petition for certiorari is **GRANTED**. The assailed Orders of the public respondent Regional Trial Court of Pasay City, Branch 114, in SCA Case No. 05-0971-CFM are **SET ASIDE**. Judgment is hereby rendered dismissing private respondents' petition for declaratory relief.

SO ORDERED.²⁸

The Apongol, Basco and Marino groups and ADOAI moved for reconsideration arguing that there is no similarity of parties between Civil Case No. 799-99 and the petition for declaratory relief because the parties in the former comprised the mere minority of all the parties-in-interest in the latter.²⁹

By way of Consolidated Comment,³⁰ BCDA manifested to the CA that COSLAP Resolution dated October 28, 1999 declaring that Airmen's Village occupants were qualified beneficiaries under the MOA was set aside in a Decision³¹ dated April 25, 2005 in CA-G.R. SP No. 68730 upon finding that the COSLAP had no jurisdiction over the disputed land and that the MOA cannot be considered as a valid source of ownership by the Airmen's Village occupants. The said decision became final and executory on November 24, 2005.³²

²⁶ *Rollo* (G.R. No. 197478), pp. 565-594.

²⁷ *Id.* at 29-44, *rollo* (G.R. No. 197418), pp. 86-101.

²⁸ *Rollo* (G.R. No. 197418), pp. 100-101, *rollo* (G.R. No. 197478), pp. 43-44.

²⁹ *Rollo* (G.R. No. 197478), pp. 595-614.

³⁰ *Id.* at 615-649.

³¹ *Id.* at 652-668.

³² *Id.* at 642.

In its Resolution³³ dated June 16, 2011, the CA denied the motion for reconsideration. On even date, the CA also resolved³⁴ the Urgent Motion for Clarification filed by the members of ADOAI, thus:

It bears stressing that what was resolved by Us in this case is only the question of propriety of the institution of the petition for declaratory relief before the RTC. It must be recalled that the said petition for declaratory relief was filed by the petitioners therein (including the herein private respondents) seeking a determination as well as declaration from the RTC of their supposed rights to remain in possession and occupation of the subject realty by virtue of Republic Act No. 7227 and the MOA. The propriety of such filing was put in issue by the BCDA in a Motion to Dismiss invoking the final and executory Decision rendered by the MeTC in an ejectment case (earlier instituted), involving the same realty, which declared that the Philippine Air Force Housing Board has a better right to the material possession thereof. Said motion was denied by the RTC and the same was brought to Our attention by way of a petition for certiorari.

Consequently, nothing in Our Decision can be construed as granting a blanket authority to the BCDA or any other agency to put the law into their hands so to speak, and evict the private respondents from the lot in suit, demolish their respective houses, and perform such other acts perpetrated or designed to deprive them of their possession without first securing the mandate of a court.

SO ORDERED.³⁵

Two separate appeals, respectively docketed as G.R. Nos. 197418 and 197478, thereafter reached the Court. Since both appeals similarly assailed the foregoing CA judgment, their consolidation was ordered in the Second Division Resolution³⁶ dated December 5, 2011.

Ruling of the Court

The Court denies the appeals.

It is immediately noticeable that, except for Apongol, Firme, Favia, and ADOAI, the petitioners in G.R. No. 197418 were not party-litigants to the petition for declaratory relief which spawned the present review. They were neither party to the related Civil Case No. 799-99 for unlawful detainer. Most of the petitioners in G.R. No. 197418 were actually the impleaded defendants in Civil Case No. M-PSY-09-10093-CV filed by the 520th Air Base Wing of the PAF, namely:

1. ALVAREZ, 2LT Nestorio Mayo,
2. ANTOLIN, 2LT Eduardo Carreon,
3. ARRIOLA, 2LT Edilberto Dimayuga,

³³ Id. at 45-52, *rollo* (G.R. No. 197418), pp. 102-109.

³⁴ *Rollo* (G.R. No. 197418), pp. 110-111, *rollo* (G.R. No. 197478), pp. 681-682.

³⁵ *Rollo* (G.R. No. 197418), p. 111, *rollo* (G.R. No. 197478), p. 682.

³⁶ *Rollo* (G.R. No. 197418), pp. 448-449, *rollo* (G.R. No. 197478), pp. 323-324.

4. ASECIO, 2LT Enrico, Jr. Eduarte,
5. BADONG, MSGT Rolando Palencia,
6. BAGAYAS, 2LT Rodolfo Casinio,
7. BENOSA, 2LT Nixon Baldonado,
8. BERMAS, 2LT Genaro Base,
9. BERMAS, 2LT Jesus Republica,
10. BERNAL, 2LT Jose, Jr. Buhayo,
11. BERTULDO, 2LT Isagani Dalida,
12. BOLO, 2LT Jose Botor,
13. BORJA, 2LT Teodoro Bagayas,
14. BUYCO, Betty G.,
15. CAAMPUED, 2LT Froilan Carranza,
16. CARANTO, 2LT Bernardo Caranto,
17. CATALAN, 2LT Joaquin Caritativo,
18. DAGMAN, 2LT Florencio Safranca,
19. DAOAS, 2LT Martin, Jr. Garnace,
20. DELA RAMA, 2LT Pedro, Jr. Barrameda,
21. DEOPITA, 2LT Antonio Guardilao,
22. DICOLEN, Rogelio N.,
23. DIMAANO, 2LT Ricardo Rivera,
24. EBREO, Ambrosito Aguila,
25. ELEDA, 2LT Dante Hernandez,
26. ESTACION, 2LT Leonardo Lainez,
27. ESTRIVO, Nestor Insular,
28. ESTUESTA, 2LT Leopoldo Mendoza,
29. FABIAN, 2LT Joel Ilagan,
30. FACIOLAN, 2LT Edgardo Oñas,
31. FERNANDEZ, 2LT Severino Alcantara,
32. FLORES, Hermogenes Bautista,
33. GARCIA, Warlito, Sr. Quinto,
34. LACERNA, 2LT Policarpio, Jr. G.,
35. LAROZA, MSGT Simplicio,
36. LATAG, 2LT Victorino Maquinto,
37. MACARAEG, SSGT Jeremias C.,
38. MARINO, 2LT Rodrigo Joven,
39. MILLARE, 2LT Benjamin B.,
40. MOJICA, 2LT Amado Erni,
41. MONTEROLA, 2LT Hector Cachero,
42. MORADA, 2LT Ruben R.,
43. MORALDE, Benjamin Villar,
44. MORANTE, 2LT Dominador, Jr. Hernandez,
45. NAVAL, 2LT Tony Quitlong,
46. OCAMPO, 2LT Eduardo Mendoza,
47. OGERIO, 2LT Reynaldo Tabios,
48. PARUNGAO, 2LT Victor Salvador,
49. RAPLIZA, 2LT Emma Brosas,
50. REYES, 2LT Efren V.,

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51. ROSENDO, 2LT Willard Gregorio,
52. RUNAS, 2LT Alejandro Orpilla,
53. SANIEL, MSGT Gonzalo Salvante,
54. SANTOS, 2LT Leonardo Ventura,
55. SENEDRIN, 2LT Raul San Vicente,
56. SENOSA, 2LT Rufino Caramat,
57. SIMEON, 2LT Primo Agcaoili,
58. STO. TOMAS, MSGT Jaime M.,
59. TABELINA, 2LT Rodolfo Madriaga,
60. TIMPUG, 2LT Ruperto Nuguid,
61. UBAO, MSGT Eugenio Tubillara,
62. UROT, 2LT Samson Almonia,
63. VELOSO, 2LT Manuel Tamares,
64. VENTURA, Yolanda De Leon,
65. VICEDO, 2LT Geronimo E.,
66. YRAOLA, 2LT Araceli Reyes,
67. ZAFE, 2LT Juan, Jr.,
68. ZARA, 2LT Mario Sarmiento,
69. LEYRAN, 2LT Eladio,
70. LAMPITOC, 2LT Elmer,
71. LOMANANG, 2LT Ricardo,
72. LIBATON, 2LT Felicito,
73. NEGRIDO, MSGT Romulo,
74. BINGCANG, 2LT Rolando,
75. CASIMIRO, 2LT Rogelio,
76. ORIBELLO, 2LT Jose (deceased), represented by his wife,
Mrs. Lilia Oribello,
77. IBONES, 2LT Allan,
78. OLMEDO, 2LT Joel,
79. GUZMAN, 2LT Alejandro Jr.,
80. OTANES, 2LT Wilfredo, and
81. MELO, MSGT Glicerio

It is a basic rule in procedural law that only the parties to the case can appeal the judgment rendered therein. Rule 45, Section 1 thus categorically states:

Sec. 1. Filing of Petition with Supreme Court. A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals x x x, may file with the Supreme Court a verified petition for review on *certiorari*. x x x.

Being non-parties to the assailed CA judgment and for lack of a showing that they are members of ADOAI, the foregoing persons are non-suited to institute the present review along with the rest of their co-petitioners, namely:

1. ASUNCION, 2LT Eduardo S.,
2. SOLOMON, 2LT Armando Banaag,
3. TAMBOGON, 2LT Jimmy,
4. TUMBAGA, 2LT Honorio Marasigan,
5. MELO, 2LT Virgilio C.,
6. SOLOMON, 2LT Armando,
7. TUMBAGA, 2LT Honorio,
8. MANGUBAT, 2LT Melchor,
9. ABUEL, 2LT Danilo,
10. OCA, 2LT Mario,
11. AQUINO, 2LT Alberto Glory,
12. SANTOS, 2LT Freddie, and
13. MENTOY, 2LT Isabelo L.

Even if this Court were to set aside this procedural obstacle and extend liberality by entertaining their supplications along with the entreaties of the proper parties, Apongol, Firme, Favia, and ADOAI, the petition in G.R. No. 197418 still warrants the denial similarly appropriate for the petition in G.R. No. 197478, for failure to muster substantive merit.

The Court agrees with the CA that the final and executory judgment in Civil Case No. 799-99 for unlawful detainer constitutes a *res judicata* to the herein SCA Case No. 05-0971-CFM for declaratory relief.

Res judicata is present when the following four essential elements concur, *viz*: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter and causes of action.³⁷

The presence of the first three elements is indubitable. Civil Case No. 799-99 which was elevated to the Court on appeal in G.R. No. 159634 was resolved by a final judgment promulgated on November 27, 2003. The Court irrefutably had jurisdiction over the appeal inasmuch as the courts *a quo* also had competent jurisdiction to adjudge the merits of the case.

It is likewise unmistakable that there is substantial identity of parties between Civil Case No. 799-99 and SCA Case No. 05-0971-CFM. The Basco group, the respondents in Civil Case No. 799-99, was among the petitioners in SCA Case No. 05-0971-CFM.

The fact that the other petitioners in SCA Case No. 05-0971-CFM were not parties in Civil Case No. 799-99 is inconsequential. The same is true with respect to the fact that PAF Housing Board was the only party in the unlawful detainer case while in the declaratory relief it was joined

³⁷ *Selga v. Brar*, G.R. No. 175151, September 21, 2011, 658 SCRA 108, 121.

by BCDA, DND, NHA and the local government of Pasay City as co-respondents. “[O]nly a substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation.”³⁸

Moreover, there is community of interest between the defendants in the unlawful detainer case and the petitioners in the action for declaratory relief because their claims of continued possession were anchored on the same source - the MOA, which was also one of the subject matters in both cases. The other and principal subject matter involved in both Civil Case No. 799-99 and SCA Case No. 05-0971-CFM was the 2.5-hectare residential quarters inside the Airmen’s Village.

Community of interest is also evident from the unity of rights and objective asserted by the defendants in Civil Case No. 799-99 and the petitioners in SCA Case No. 05-0971-CFM, which are – the right to continuously possess their living quarters and the objective of averting their eviction therefrom.

These right and objective were in turn based on an identical set of facts and allegations asserted in both actions, *viz*: (a) the lease of their respective living quarters was covered by similarly worded contracts of occupancy executed with the PAF Housing Board; (b) pursuant to the contract, their right to lease terminated when they retired from service; (c) prior to their retirement, R.A. No. 7227 was enacted and it supposedly abrogated the contracts of occupancy; and (d) the MOA allegedly reserved the Airmen’s Village for a socialized housing project for the benefit of its occupants who cannot thus be evicted from their living quarters.

The causes of action in both cases were also similar in that their resolution required the assessment of the same set of evidence. The claim of continued possession in resistance to the unlawful detainer case was anchored on the provisions of the MOA which is the very same document submitted for the interpretation of the trial court in the declaratory relief case. “Causes of action are identical when there is an identity in the facts essential to the maintenance of the two actions, or where the same evidence will sustain both actions. If the same facts or evidence can sustain either, the two actions are considered the same, so that the judgment in one is a bar to the other.”³⁹

It is palpable as well from the records that the settlement of the controversies in Civil Case No. 799-99 and SCA Case No. 05-0971-CFM entailed the determination of identical issues. In Civil Case No. 799-99, the

³⁸ *Dela Rama v. Judge Mendiola*, 449 Phil. 754, 763 (2003), citing *Sps. Serrano v. Court of Appeals*, 426 Phil. 554, 561 (2002); *University Physicians Services, Inc. v. Court of Appeals*, 381 Phil. 54, 67 (2000).

³⁹ *Dela Rama v. Judge Mendiola*, *id.*, citing *Stilianopulos v. City of Legaspi*, 374 Phil. 879, 897 (1999).

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issue was: *Whether, after their retirement from service, the Airmen's Village occupants had the right to continuously possess their living quarters by virtue of R.A. No. 7227 and the MOA.* On the other hand, the issue proffered by the petitioners in SCA Case No. 05-0971-CFM was: *Whether the retired military servicemen occupying Airmen's Village were the beneficiaries of the MOA and thus cannot be evicted from their living quarters.*

These issues have long been resolved with finality in Civil Case No. 799-99 when Basco Group, the defendants therein, were adjudged no longer entitled to the material possession of their living quarters upon their retirement because their contracts of occupancy remained in force and was not abrogated by R.A. No. 7227, viz:

In an unlawful detainer case, the possession of the defendant is inceptively lawful but it becomes illegal by reason of the termination of his right to the possession of the property under his contract with the plaintiff.

x x x Under their contracts of occupancy, respondents agreed that upon their retirement or separation from service, they would immediately vacate the quarters/housing units. However, despite their separation from service, respondents refused and still refuse to vacate on the ground that the ownership of the lots on which the quarters/housing units are standing had been transferred to the [BCDA]. Respondents' arguments does not hold water.

As respondents' contract of occupancy expired upon their retirement or separation from service, they lost all their rights to remain in the quarters/housing units, hence, petitioner has the right to eject them from the premises. The passage of Republic Act No. 7227 did not abrogate the contracts of occupancy between the petitioner and the respondents. In this case, the contracts of occupancy are between the petitioner and the respondents alone and to no other. It is considered as the law between them, thus, said contracts remain valid and can subsist notwithstanding the claim of transfer of ownership of the property. Respondents cannot evade the obligatory force of the contract of occupancy by claiming that the ownership of the property leased to them was transferred or is in the name of another party.

After a lease contract expires, the lessee becomes a usurper, and after demand for the lessee to vacate, the possession becomes illegal. Hence, respondents are not entitled to continue their possession of the premises.⁴⁰ (Citations omitted)

It was further settled with finality that any right they may have under the MOA was merely contingent; it may or may not arise. Hence, it cannot overcome their legal obligation to vacate under their contracts of occupancy.⁴¹

⁴⁰ Rollo (G.R. No. 197478), pp. 415-416.

⁴¹ See Decision dated March 13, 2000 of the MeTC in Civil Case No. 799-99, id. at 397-404.

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Clearly then, any question on the petitioners' right to a continued possession of their living quarters is now conclusive upon them and they cannot be permitted to re-litigate the same by filing the petition for declaratory relief. "This is the essence of *res judicata* or bar by prior judgment. The parties are bound not only as regards every matter offered and received to sustain or defeat their claims or demand but as to any other admissible matter which might have been offered for that purpose and of all other matters that could have been adjudged in that case."⁴²


Moreover, it has been held that "[w]hen the primary issue to be resolved is physical possession, the issue should be threshed out in the ejectment suit, and not in any other case such as an action for declaratory relief to avoid multiplicity of suits."⁴³ This precedent carries more obligatory force when, as in this case, the ejectment suit is already settled by a final and executory judgment.

All told, the CA correctly ruled that the RTC gravely abused its discretion in denying BCDA's motion to dismiss. The Court also finds that the motion was procedurally acceptable because it was filed before BCDA has interposed its Answer to the petition for declaratory relief.

Lastly, one consequence of the dismissal of the principal action for declaratory relief is the automatic revocation of the writ of preliminary injunction as it is a mere auxiliary to, an adjunct of, and subject to the outcome of the main case. As such, it is deemed lifted upon dismissal of the main case.⁴⁴

WHEREFORE, premises considered, the consolidated petitions are hereby **DENIED** and the Decision dated September 30, 2010 of the Court of Appeals in CA-G.R. SP No. 107074 is **AFFIRMED**." (Jardeleza, J., no part in view of participation in the Office of the Solicitor General; Leonardo-de Castro, J., designated additional member per Special Order No. 1890 dated November 28, 2014.)

Very truly yours,


WILFREDO V. LAPITAN
 Division Clerk of Court

Atty. Virgilio P.A. Ocaya
 Counsel for Petitioner in GR 197418
 604 State Condominium Bldg.
 188 Salcedo Street, Legaspi Village
 1229 Makati City

⁴² *Dela Rama v. Judge Mendiola*, supra note 38, at 764.

⁴³ *Panganiban v. Pilipinas Shell Petroleum Corp.*, 443 Phil. 753, 767-768 (2003).

⁴⁴ *Arevalo v. Planters Development Bank*, G.R. No. 193415, April 18, 2012, 670 SCRA 252, 260.

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Atty. Anecio R. Guades
Counsel for Petitioner
57-C Samapaguita Street
Holy Spirit, 1127 Quezon City

COURT OF APPEALS
CA G.R. SP No. 107074
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

Bases Conversion Development Authority
Respondent
Bonifacio Technology Center
1631 Taguig City

PAF Housing Board
Respondent
520 Airbase Wing, Villamor Airbase
1300 Pasay City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 114, 1300 Pasay City
(SCA Case No. 05-097-CFM)

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