

SECOND DIVISION

[G.R. No. 156470, April 30, 2008]

**FREDERICK DAEL, Petitioner, vs. SPOUSES BENEDICTO and
VILMA BELTRAN, Respondents.**

D E C I S I O N

QUISUMBING, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure raising pure questions of law, and seeking a reversal of the Resolution^[1] dated May 28, 2002 of the Regional Trial Court (RTC), Branch 34, Negros Oriental, Dumaguete City, in Civil Case No. 13072, which dismissed with prejudice, petitioner's complaint for breach of contract and damages against the respondents. Also assailed is the trial court's Resolution^[2] dated December 5, 2002, denying petitioner's motion for reconsideration.

The facts are as follows:

On November 23, 2001, petitioner Frederick Dael filed before the RTC, Branch 34, Negros Oriental, a Complaint^[3] for breach of contract and damages against respondent-spouses Benedicto and Vilma Beltran. In his complaint, petitioner alleged that respondents sold him a parcel of land covering three hectares located at Palayuhan, Siaton, Negros Oriental. Petitioner alleged that respondents did not disclose that the land was previously mortgaged. Petitioner further alleged that it was only on August 6, 2001 when he discovered that an extrajudicial foreclosure over the property had already been instituted, and that he was constrained to bid in the extrajudicial sale of the land conducted on August 29, 2001. Possession and ownership of the property was delivered to him when he paid the bid price of P775,100. Petitioner argued that respondents' non-disclosure of the extrajudicial foreclosure constituted breach of contract on the implied warranties in a sale of property as provided under Article 1547^[4] of the New Civil Code. He likewise claimed that he was entitled to damages because he had to pay for the property twice.

On January 10, 2002, respondents filed a Motion to Dismiss^[5] on the ground that petitioner had no cause of action since the contract to sell stated that the vendor was Benedicto Beltran and the vendee was Frederick George Ghent Dael, not the petitioner.

On February 12, 2002, in a hearing on the motion, Atty. Dirkie Y. Palma, petitioner's counsel, disclosed that petitioner is the father of Frederick George Ghent Dael whose name appears as the contracting party in the Contract to Sell dated July 28, 2000. Atty. Palma moved to reset the hearing to enable the petitioner to withdraw and have the complaint dismissed, amended, or to enter into a compromise agreement

with respondents.

The RTC on the same day ordered petitioner to clarify whether or not he and Frederick George Ghent Dael were one and the same person; whether or not they were Filipinos and residents of Dumaguete City; and whether or not Frederick George Ghent Dael was of legal age, and married, as stated in the Contract to Sell. [6] Petitioner did not comply. Instead, he filed a Notice of Dismissal on February 20, 2002. The Notice of Dismissal states:

Plaintiff, through counsel, unto this Honorable Court, respectfully files this notice of dismissal of the above-captioned case without prejudice by virtue of Rule 17, Section 1 of the 1997 Rules of Civil Procedure. By this notice, defendants['] Motion to Dismiss is then rendered moot and academic.

WHEREFORE, plaintiff Frederick Dael respectfully prays that this Honorable Court dismiss the above-captioned case without prejudice.

RESPECTFULLY SUBMITTED [7]

On May 28, 2002, the RTC dismissed the complaint *with prejudice*. The dispositive portion of the Resolution reads thus:

WHEREFORE, finding merit to defendants' contention that plaintiff Frederick Dael has no cause of action against them since said plaintiff is not one of the contracting parties in the Contract to Sell, which is allegedly breached, the Motion to Dismiss filed by defendants is granted. Consequently, the case at bar is ***DISMISSED, with prejudice.***

SO ORDERED. [8] [Emphasis supplied.]

Arguing that the RTC erred in dismissing the complaint with prejudice based on respondents' Motion to Dismiss, and not without prejudice based on his Notice of Dismissal, petitioner filed a Motion for Reconsideration [9] but it was denied by the RTC in a Resolution dated December 5, 2002.

Hence, this petition.

Petitioner raises the following issues for our resolution:

I.

WHETHER [OR] NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR BREACH OF CONTRACT AND DAMAGES BASED ON THE MOTION TO DISMISS FILED BY HEREIN RESPONDENTS AND NOT ON THE NOTICE OF DISMISSAL PROMPTLY [FILED] BY HEREIN PETITIONER BEFORE RESPONDENTS COULD FILE A RESPONSIVE PLEADING, UNDER RULE 17, SECTION 1 OF THE 1997 RULES O[F] CIVIL PROCEDURE.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR BREACH OF CONTRACT AND DAMAGES WITH PREJUDICE. ^[10]

On the other hand, respondents raise the following issues:

I.

WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE ACTION FOR BREACH OF CONTRACT AND DAMAGES ON THE BASIS OF THE MOTION TO DISMISS FILED BY THE DEFENDANT AND NOT ON THE BASIS OF THE NOTICE OF DISMISSAL FILED BY THE PLAINTIFF.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT IS CORRECT IN DISMISSING THE CASE WITH PREJUDICE.

III.

WHETHER OR NOT PETITIONER'S RECOURSE UNTO THIS HONORABLE COURT BY WAY OF PETITION FOR REVIEW ON CERTIORARI IS PROPER. ^[11]

Essentially, the issues are (1) Did the RTC err in dismissing the complaint with prejudice? and (2) Was petitioner's recourse to this Court by way of a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure proper?

Petitioner, citing *Serrano v. Cabrera and Makabulo*^[12] in his Memorandum,^[13] argues that the 1997 Rules of Civil Procedure expressly states that before the defendant has served his answer or moved for a summary judgment, he has, as a matter of right, the prerogative to cause the dismissal of a civil action filed, and such dismissal may be effected by a mere notice of dismissal. He further argues that such dismissal is without prejudice, except (a) where the notice of dismissal so provides; (b) where the plaintiff has previously dismissed the same case in a court of competent jurisdiction; or (c) where the dismissal is premised on payment by the defendant of the claim involved. He asserts it is the prerogative of the plaintiff to indicate if the Notice of Dismissal filed is with or without prejudice and the RTC cannot exercise its own discretion and dismiss the case with prejudice.

On the other hand, respondents in their Memorandum,^[14] counter that the RTC is correct in dismissing the case with prejudice based on their Motion to Dismiss because they filed their motion on January 10, 2002, ahead of petitioner who filed his Notice of Dismissal only on February 20, 2002. They further argue that although it is correct that under the 1997 Rules of Civil Procedure a complaint may be dismissed by the plaintiff by filing a notice of dismissal before service of the answer or of a motion for summary judgment, the petitioner filed the Notice of Dismissal only as an afterthought after he realized that the Motion to Dismiss was meritorious.

Further, they point out that petitioner deceived the court when he filed the action knowing fully well that he was not the real party-in-interest representing himself as