

TWENTY-FIRST DIVISION

[CA-G.R. SP NO. 03776, January 30, 2014]

**EVELYN K. DISMAS, PETITIONER, VS. THE HONORABLE
VIRGINIA D. TEHANO-ANG, PRESIDING JUDGE, BRANCH 1,
REGIONAL TRIAL COURT OF TAGUM CITY, AND THE BAYANIHAN
LOT BUYERS, INC. AND AMADO ZABLAN, RESPONDENTS.**

D E C I S I O N

BORJA, J.:

This is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court seeking to set aside the October 21, 2009 and June 2, 2010 Orders^[2] of the Regional Trial court, Branch 1, 11th Judicial Region, Tagum City, Davao del Norte, in Civil Case No. 4028, a suit for "Sum of Money, Specific Performance, Abuse of Rights and Damages".

The Facts of the Case

Private respondent Bayanihan Lot Buyers, Inc. (BLBI) is a duly registered corporation organized for the purpose of acquiring residential lots for resale to its members and to other interested buyers. Private respondent Amado Zablan is the former director and president of BLBI. Petitioner Evelyn Dismas is a Project Consultant and an *ex-officio* member of the Executive Committee of BLBI.^[3]

On May 13, 1983, the Board of Directors of BLBI issued Board Resolution No. 1, series of 1983, authorizing petitioner Evelyn Dismas, as Project Consultant, to "prepare the feasibility study for the development of the Bayanihan Subdivision Project; to transact, negotiate and implement for and in behalf of the association from any bank and the Human Settlement Regulatory Commission concerning the said project".^[4]

On June 11, 1983, Resolution No. 3 was issued creating an Executive Committee tasked to "execute and implement the Bayanihan Subdivision Project" . The members of the said Committee included herein petitioner as *ex-officio* member.^[5]

On August 28, 1984, the Bank of the Philippine Islands (BPI) wrote BLBI that the latter's request to buy a foreclosed property situated at Sitio Mangga, Tagum, Davao del Norte, had been approved. The purchase price was P425,000.00, cash basis.^[6]

On October 11, 1984, a Deed of Sale was executed between BLBI and BPI. The Transfer Certificate of Title (TCT) in the name of BPI and the other pertinent documents were then turned over to petitioner.^[7]

On November 30, 1984, BLBI issued Board Resolution No. 7 for the payment of herein petitioner's professional fee equivalent to 15 percent of the purchase price

and 5 percent of the net profit "in the supervision and management in the actual implementation of the project".^[8]

On January 1, 1985, TCT No. T-44726 was issued in the name of BLBI.^[9]

Petitioner then applied for a subdivision permit with the Human Settlement Regulatory Commission.^[10]

On May 19, 1985, BLBI issued Resolution No. 15 which decreed thus:

RESOLVED, as it is hereby resolved, that the duties of the persons mentioned in paragraph 1 of this resolution, automatically expired on Election Day of May 12, 1985 after the election and proclamation of the new Board of Directors;

RESOLVED FURTHER, that the Ex-Officio member of the Executive Committee, Miss Evelyn Dismas, likewise expired on that same day in the sense that she is not a member of the Board of Directors whatsoever;

RESOLVED FINALLY, that the expired members of the Executive Committee, be furnished a copy of this Resolution for their information and preparation for their turnover of all association's money and properties which are presently in the [possession], to the new Officers of the Association. ^[11]

BLBI filed before RTC Branch 31, Tagum City, Civil Case No. 3228, a complaint for "Delivery of TCT No. T-44726 under Sec. 107, PD 1529 with Damages" against herein petitioner Dismas to recover the aforementioned certificate of title from her. Dismas admitted having possession of the said TCT but interposed the defense that she was retaining it because she had not been paid her professional fees. As additional counterclaim, Dismas claimed P17,870.625 for her unpaid services.^[12]

On January 15, 2003, the said RTC rendered a Judgment on the Pleadings in Civil Case No. 3228 directing Dismas to deliver TCT No.T-44726 to BLBI; Dismas's counterclaim was dismissed.^[13]

On April 14, 2009, Dismas filed the present case. In her complaint *a quo*, she sought the following remedies –

WHEREFORE, premises considered, and in the interest of justice and fairness, it is most respectfully prayed of this Honorable Court that judgment be rendered against defendants either to jointly or severally, thus;

- a. Moral Damages the amount of which shall be proven during the trial;
- b. Exemplary Damages the amount of which shall be proven during the trial;
- c. Ordering the Defendants to settle and pay Plaintiff's Ten Percent (10%) Professional Fee of Four Hundred Twenty Five Thousand Pesos (Php425,000) inclusive of accrued legal interest covering the

period 1985 to 2009 as Actual Damages;

- d. Directing the Defendant BALBAI to honor Plaintiff's continuing right, interest and participation in the net profits guaranteed by the project;
- e. Attorney's fees amounting to One Hundred Thousand Pesos (Php100,000.00) as acceptance fee, Five Thousand Pesos (Php5,000.00) as appearance fee, and Twenty Five Percent of the total amount awarded as professional fee on a contingent basis;
- f. A writ of attachment be issued against the property of defendant as security for the satisfaction of any judgment that may be recovered.
- g. The costs of the instant suit.

Other reliefs, just and equitable, under the premises, are likewise prayed for.^[14]

On October 21, 2009, the Regional Trial Court, Branch 1, 11th Judicial Region, Tagum City, Davao del Norte, in the first of the herein assailed Orders, disposed as follows –

Res Judicata or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause. The doctrine of *res judicata* is founded on a public policy against re-opening that which has previously been decided, so as to put the litigation to an end. The four requisites for *res judicata* to apply are: (a) the former judgment or order must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment or an order on the merits; and (d) there must be between the first and the second actions, identity of parties, of subject matter and of cause of action. (National Investment and development Corp. vs. Basilisa Bautista, March 13, 2009).

All requisites are present herein. This case is now barred by Civil Case No. 3228.

WHEREFORE, premises considered, this case is hereby DISMISSED.

SO ORDERED.^[15]

Petitioner filed a motion for reconsideration which was denied by the trial court in the second of the Orders herein assailed.^[16]

Hence, the present petition in which petitioner contends that –

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN RULING THAT CIVIL CASE NO. 4028 IS BARRED BY CIVIL CASE NO. 3228.^[17]

The Ruling of the Court