



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DEVELOPMENT BANK OF THE
PHILIPPINES,

Petitioner,

GR. No. 170060

Present:

CARPIO, *J.*, Chairperson,
BRION,*
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

-versus-

CLARGES
CORPORATION,

Respondent.

REALTY

Promulgated:

17 AUG 2016

X-----

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DECISION

LEONEN, *J.*:

The admission of a third-party complaint lies within the sound discretion of the trial court. If leave to file a third-party complaint is denied, then the proper remedy is to file a separate case, not to insist on the admission of the third-party complaint all the way up to this Court.

This resolves a Petition for Review on Certiorari¹ assailing the Court of Appeals Decision² dated June 22, 2005 in CA-G.R. CV No. 56570. The Court of Appeals affirmed the Regional Trial Court Decision³ ordering the

* On leave.

¹ Rollo, pp. 33-70.

² Id. at 9-24. The Decision was penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Renato C. Dacudao (Chair) and Edgardo F. Sundiam of the Thirteenth Division, Court of Appeals, Manila.

³ Id. at 92-99. The Decision was penned by Judge Delia H. Panganiban of Branch 64 of the Regional

Development Bank of the Philippines to deliver to Clarges Realty Corporation a clean title of the property subject of the Deed of Absolute Sale dated November 23, 1987.⁴

The property is a 12,355-square-meter parcel of land located along Pasong Tamo Extension, Makati City.⁵ It was covered by Transfer Certificate of Title (TCT) No. S-16279 and was registered under the name of Marinduque Mining and Industrial Corporation.⁶

To secure a loan, Marinduque Mining and Industrial Corporation first mortgaged the property to Caltex Philippines, Inc. A second mortgage was constituted over the property, this time in favor of the Development Bank of the Philippines and the Philippine National Bank.⁷

When Marinduque Mining and Industrial Corporation failed to pay its loan obligations, the Development Bank of the Philippines and the Philippine National Bank jointly instituted extrajudicial foreclosure proceedings over the property sometime in July and August 1984.⁸ The mortgagee banks emerged as the highest bidders during the public sale but were unable to redeem the property because of Caltex Philippines, Inc.'s first mortgage.

On January 20, 1986, first mortgagee Caltex Philippines, Inc. foreclosed its mortgage on the property.⁹ As second mortgagee, the Development Bank of the Philippines redeemed the property from Caltex Philippines, Inc.¹⁰ and the property formed part of the Development Bank of the Philippines' physical assets.

The Development Bank of the Philippines then offered the property for public sale, where Clarges Realty Corporation emerged as the highest bidder.¹¹ Clarges Realty Corporation offered ₱24,070,000.00 as payment for the property.¹²

On November 23, 1987, the Development Bank of the Philippines (as vendor) and Clarges Realty Corporation (as vendee) executed a Deed of

Trial Court, Makati City.

⁴ Id. at 23.

⁵ Id. at 10.

⁶ Id.

⁷ Id. See *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768 (1998) [Per J. Kapunan, Third Division]; and *Uniland Resources v. Development Bank of the Philippines*, 277 Phil. 839 (1991) [Per J. Gancayco, First Division].

⁸ See *Development Bank of the Philippines v. The Honorable Court of Appeals*, 415 Phil. 538, 541 (2001) [Per J. Kapunan, First Division].

⁹ *Rollo*, p. 10.

¹⁰ Id.

¹¹ Id.

¹² Id. at 204.

Absolute Sale¹³ for the property. The parties agreed that all expenses to be incurred in connection with the transfer of title to Clarges Realty Corporation would be borne by the Development Bank of the Philippines.¹⁴ Moreover, the Development Bank of the Philippines bound itself under Clause 6 of the Deed of Absolute Sale to deliver a title to the property "*free from any and all liens and encumbrances on or before December 15, 1987.*"¹⁵

The Development Bank of the Philippines succeeded in having the property registered under its name. Marinduque Mining and Industrial Corporation's TCT No. S-16279 was cancelled and, in its place, TCT No. 151178 was issued.¹⁶

However, TCT No. 151178 contained annotations from the former TCT No. S-16279, specifically, the mortgage lien of the Philippine National Bank and a tax lien for unpaid taxes incurred by Marinduque Mining and Industrial Corporation. The annotations state:

Entry No. 761 – MORTGAGE in favor of PHILIPPINE NATIONAL BANK in the initial amount of PHILIPPINE PESOS: FOUR BILLION (₱4,000,000,000.00) and to secure any and all obligations with PNB, whether contracted before, during or after the date of this instrument, acknowledged before Notary Public Manila, Norma C. _____ [illegible in rollo] Doc No. 284, Page No. 58, Book No. III, series of 1981.

Date of instrument – July 13, 1981

Date of inscription – June 10, 1982

[sgd.]

VICENTE N. COLOYAN, Register of Deeds

x-x-x-x-x-x-x-x

Entry No. 24513/S-16279 – NOTICE OF TAX LIEN –

The registered owner of this title is under obligation to pay the government of the Republic of the Philippines in the amount of SIXTY EIGHT MILLION SEVEN HUNDRED FIFTY EIGHT THOUSAND EIGHT HUNDRED FIFTY TWO & 51/100 (₱68,758,852.51) PESOS in accordance with the letter of Romulo M. Villa, deputy commissioner, BIR, QC.

Date of instrument – Aug. 28, 1986

Date of inscription – Oct. 10, 1986

[sgd.]

MILA G. FLORES, Register of Deeds¹⁷

¹³ Id. at 216–217.

¹⁴ Id. at 11.

¹⁵ Id.

¹⁶ Id. at 213.

¹⁷ Id. at 215.

December 15, 1987 passed, and the Development Bank of the Philippines delivered to Clarges Realty Corporation the owner's duplicate copy of TCT No. 151178 with the mortgage and tax liens still annotated on it.¹⁸ Clarges Realty Corporation demanded a clean title from the Development Bank of the Philippines, but the bank failed to deliver a clean title.¹⁹

Thus, Clarges Realty Corporation filed before the Regional Trial Court of Makati City a Complaint²⁰ for Specific Performance and Damages praying that the Development Bank of the Philippines be ordered to deliver a title to the property free of liens and encumbrances as provided in Clause 6 of the Deed of Absolute Sale.

The Development Bank of the Philippines answered²¹ the Complaint, contending that Clarges Realty Corporation had no cause of action against it. Clarges Realty Corporation allegedly knew that the payment of the tax liability and the corresponding cancellation of the tax lien had devolved to the Asset Privatization Trust after the latter acquired the assets of the Development Bank of the Philippines²² under Proclamation No. 50.²³

Trial on the merits ensued. During the trial, Clarges Realty Corporation had the mortgage lien cancelled, thus incurring ₱163,929.00 in expenses.²⁴ For their part, the Development Bank of the Philippines and the Asset Privatization Trust had the tax lien partially cancelled, with the tax liability reduced from ₱68,758,852.51 to ₱24,311,997.41.²⁵ TCT No. 151178 (under the name of the Development Bank of the Philippines) was cancelled, and a new one was issued—TCT No. 162836—under the name of Clarges Realty Corporation.²⁶ Left annotated on TCT No. 162836 was the partially cancelled tax lien:

Entry No. 91584/S-16279 – PARTIAL CANCELLATION –

By virtue of a Request of the Bureau of Internal Revenue, the Notice of Tax Lien inscribed under Entry No. 24513 is hereby PARTIALLY CANCELLED as to the amount of TWENTY FOUR MILLION THREE HUNDRED ELEVEN THOUSAND NINE HUNDRED NINETY SEVEN PESOS AND FORTY ONE CENTAVOS (₱24,311,997.41) signed JOSE U. ONG, Commissioner of Internal Revenue.

Date of Instrument – Oct. 16, 1989

¹⁸ Id. at 12.

¹⁹ Id.

²⁰ Id. at 207–212.

²¹ Id. at 218–225.

²² *Rollo*, p. 221.

²³ Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust (1986).

²⁴ *Rollo*, p. 13.

²⁵ Id.

²⁶ Id.

Date of inscription – Jan. 19, 1990

[sgd.]
ANTONIO L. LEACHON III
DEPUTY REGISTER OF DEEDS II²⁷

Clarges Realty Corporation had already rested its case when the Development Bank of the Philippines moved for leave of court to file a third-party complaint.²⁸ The Development Bank of the Philippines sought to implead the Asset Privatization Trust as a third-party defendant and maintained that the Asset Privatization Trust had assumed the “direct and personal”²⁹ obligation to pay for Marinduque Mining and Industrial Corporation’s tax liability and to have the partially reduced tax lien cancelled.

Clarges Realty Corporation opposed the Motion for Leave.³⁰ It argued that admitting the third-party complaint would cause unreasonable delay and entail unnecessary costs.³¹

Conceding that the Development Bank of the Philippines’ claim against the Asset Privatization Trust was connected to the claim of Clarges Realty Corporation, the trial court nevertheless denied the Motion for Leave in the Order³² dated January 11, 1994. According to the trial court, the Development Bank of the Philippines “should have impleaded the Asset Privatization Trust during the preparation of its answer if indeed a third party is liable to it for subrogation or other relief.”³³ The trial court added that “[t]he filing of a third party complaint [when the plaintiff had already rested its case] would [have unjustly delayed the case] considering that summons must be served on the third-party defendant and the latter should still present its evidence to negate [the defendant’s] claim against it.”³⁴

The Development Bank of the Philippines moved to reconsider the Order denying the Motion for Leave. However, the Motion for Reconsideration was denied in the Order³⁵ dated March 21, 1994.

Development Bank of the Philippines then proceeded to present its evidence.³⁶

²⁷ RTC records, p. 318, Photocopy of TCT No. 162836, registered in the name of Clarges Realty Corporation.

²⁸ *Rollo*, pp. 471–473.

²⁹ *Id.* at 477.

³⁰ RTC records, p. 369–372.

³¹ *Id.*

³² *Rollo*, pp. 496–498.

³³ *Id.* at 497.

³⁴ *Id.* at 497–498.

³⁵ *Id.* at 505.

³⁶ *Id.* at 14.

The trial court ruled in favor of Clarges Realty Corporation, and in the Decision³⁷ dated May 30, 1997, it granted the Complaint for Specific Performance and Damages. The trial court found that the Development Bank of the Philippines breached Clause 6 of the Deed of Absolute Sale when it failed to deliver to Clarges Realty Corporation a title to the property free from liens and encumbrances on or before December 15, 1987.³⁸

Regardless of whether the Asset Privatization Trust undertook to have the tax lien cancelled, the trial court held that Clarges Realty Corporation could only demand the delivery of a clean title from the Development Bank of the Philippines under the principle of relativity of contracts.³⁹

The trial court declared the Development Bank of the Philippines liable for damages for breaching Clause 6 of the Deed of Absolute Sale.⁴⁰ It likewise ordered the bank to reimburse Clarges Realty Corporation the amount of ₱163,929.00, representing the expenses incurred to have the mortgage lien cancelled.⁴¹

The dispositive portion of the May 30, 1997 Decision reads:

WHEREFORE, in view of the foregoing defendant Development Bank of the Philippines is ordered:

1. To remove or cause the removal of Entry No. 94584[sic]/S-16279 from TCT No. 162836 within thirty (30) days from finality of this Decision;
2. To pay plaintiff Clarges Realty Corporation the amount of ₱163,929 representing the fees incurred by the latter for the cancellation of Entry No. 761, and the amount of ₱632.90 representing miscellaneous and transportation expenses incurred by plaintiff's representative in connection with this case;
3. To pay ₱50,000.00 as attorney's fees; and
4. To pay the costs of litigation.

SO ORDERED.⁴²

The Development Bank of the Philippines filed an appeal before the Court of Appeals.

However, the Court of Appeals affirmed with modification the trial

³⁷ Id. at 92-99. The Decision was penned by Presiding Judge Delia H. Panganiban.

³⁸ Id. at 95-96.

³⁹ Id. at 96.

⁴⁰ Id. at 97.

⁴¹ Id. at 99.

⁴² Id. at 99.

court's Decision.⁴³ Like the trial court, the Court of Appeals held that the Development Bank of the Philippines breached its obligation to deliver a clean title to the property to Clarges Realty Corporation.⁴⁴ According to the Court of Appeals, Clause 6 of the Deed of Absolute Sale is clear, leaving no doubt as to the intention of the parties to the contract.⁴⁵ The Court of Appeals added that compliance with Clause 6 cannot be made to depend on the willingness—or lack thereof—of the Asset Privatization Trust to assume the obligation of having the tax lien cancelled, the Asset Privatization Trust being a non-party to the contract of sale.⁴⁶

Touching on the trial court's denial of leave to admit the third-party complaint, the Court of Appeals held that the trial court did not gravely abuse its discretion. It found that granting leave would have further delayed the case since Clarges Realty Corporation had already rested its case when the Motion for Leave was filed.⁴⁷

As to the amount of damages, the Court of Appeals deleted the award of ₱632.90, representing miscellaneous and transportation expenses to Clarges Realty Corporation. The Court of Appeals found that the reimbursement receipts presented in evidence were not the best evidence of the miscellaneous and transportation expenses.⁴⁸

The dispositive portion of the Court of Appeals' June 22, 2005 Decision reads:

WHEREFORE, the Decision of the RTC of Makati City, Branch 64 in Civil Case No. 89-2895 is **MODIFIED** in that the award of damages in the amount of P632.90 representing miscellaneous expenses and transportation expenses is hereby **DELETED**. In all other respects, the said judgment is **AFFIRMED**.

SO ORDERED.⁴⁹ (Emphasis in the original)

The Development Bank of the Philippines moved for partial reconsideration, but the Motion was denied in the Resolution⁵⁰ dated October 10, 2005.

Petitioner Development Bank of the Philippines then filed before this Court its Petition for Review on Certiorari.⁵¹ Respondent Clarges Realty

⁴³ Id. at 23.

⁴⁴ Id. at 17–19.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id. at 21.

⁴⁸ Id. at 22.

⁴⁹ Id. at 23.

⁵⁰ Id. at 26–27.

⁵¹ Id. at 33–70.

Corporation filed a Comment,⁵² to which petitioner filed a Reply.⁵³

Upon the directive of this Court,⁵⁴ petitioner⁵⁵ and respondent⁵⁶ filed their respective Memoranda.

Petitioner insists that the Asset Privatization Trust should be impleaded as a third-party defendant.⁵⁷ Under Proclamation No. 50, the Asset Privatization Trust acquired the assets of the now defunct Marinduque Mining and Industrial Corporation, which had been mortgaged to petitioner.⁵⁸ By operation of law, the Asset Privatization Trust assumed the obligations and liabilities attached to these assets, including the obligation to pay the unpaid taxes corresponding to the tax lien.⁵⁹ Thus, it became legally and physically impossible for petitioner to deliver a clean title to respondent since the obligation had devolved to the Asset Privatization Trust.⁶⁰ Consequently, the third-party complaint against the Asset Privatization Trust should have been admitted for an exhaustive disposition of this case.⁶¹

With respect to the actual damages, petitioner argues that they were erroneously awarded to respondent. It was petitioner that secured a trial court order utilized by respondent to have the mortgage lien cancelled.⁶²

Lastly, petitioner claims that respondent is not entitled to attorney's fees and costs of litigation for lack of factual and legal basis.⁶³

Respondent counters that the issues raised by petitioner involve factual questions that are not proper in a petition for review on certiorari.⁶⁴

Relying on the principle of relativity of contracts—that contracts bind only the parties to it—respondent maintains that the Asset Privatization Trust is not a proper party to the suit because the Deed of Absolute Sale was executed exclusively between petitioner and respondent.⁶⁵ The obligation to deliver a clean title remained with petitioner and cannot prejudice the Asset Privatization Trust.⁶⁶ The Motion for Leave was correctly denied, especially

⁵² Id. at 107–124.

⁵³ Id. at 137–151.

⁵⁴ Id. at 153–154, Resolution dated November 15, 2006.

⁵⁵ Id. at 298–342.

⁵⁶ Id. at 383–417.

⁵⁷ Id. at 318.

⁵⁸ Id. at 332.

⁵⁹ Id. at 333.

⁶⁰ Id.

⁶¹ Id.

⁶² Id. at 334–336.

⁶³ Id. at 336–338.

⁶⁴ Id. at 394–396.

⁶⁵ Id. at 397–398.

⁶⁶ Id.

because it had been more than four (4) years since the filing of the Answer on March 17, 1989 when the Motion for Leave was filed on October 29, 1993.⁶⁷

There is neither legal nor physical impossibility to pay the tax liability, according to respondent. Article 1266⁶⁸ of the Civil Code, which releases the obligor from the prestation, only applies to obligations to do, not obligations to give. In this case, the obligation involved is an obligation to give, specifically, to deliver a clean title to the property in the Deed of Absolute Sale. Petitioner cannot avoid its obligation.⁶⁹

As for the ₱163,929.00 in actual damages awarded to respondent, respondent argues that there would have been no need to file a petition for cancellation of lien had petitioner delivered a clean title in the first place.⁷⁰ When respondent utilized the trial court order secured by petitioner, the corporation incurred expenses for the actual cancellation—registration fees, entry fee, legal research fees, and other related fees—for which it must be reimbursed.⁷¹

Finally, respondent claims that it was correctly awarded attorney's fees and costs of suit under Article 2208(2)⁷² of the Civil Code because it was compelled to litigate.⁷³

The issues for this Court's resolution are:

First, whether the trial court erred in denying the Motion for Leave to File Third-Party Complaint;

Second, whether the award to respondent of ₱163,929.00 in actual damages was proper; and

Lastly, whether respondent is entitled to attorney's fees and costs of suit.

⁶⁷ Id. at 403.

⁶⁸ CIVIL CODE, art. 1266 provides:

Art. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

⁶⁹ *Rollo*, pp. 406–407.

⁷⁰ Id. at 408–410.

⁷¹ Id.

⁷² CIVIL CODE, art. 2208(2) provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other judicial costs, cannot be recovered, except:

....

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[.]

⁷³ *Rollo*, pp. 196–199.

This Petition must be denied.

I

Rule 6, Section 11 of the Rules of Court governs the filing of third-party complaints:

SEC. 11. *Third, (fourth, etc.)-party complaint.* – A third (fourth, etc.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

Based on this provision, the Asset Privatization Trust would have been a valid third-party defendant. As the trustee of the National Government to whom petitioner's assets were transferred under Proclamation No. 50,⁷⁴ the Asset Privatization Trust acquired the liabilities attached to those assets. The tax lien over the property here is one such liability, and petitioner may ask, as it did the Asset Privatization Trust, for contribution for the payment of the unpaid tax and the tax lien's consequent cancellation.

However, petitioner need not await for contribution from the Asset

⁷⁴ Proc. No. 50 (1986), sec. 24 provides:

SECTION 24. *DEED OF ASSIGNMENT.* Each government institution from which assets are to be transferred pursuant to this Proclamation shall and is hereby directed to execute, promptly and in no event later than thirty days after the issuance by the President of the relevant instrument referred to in Section 23 hereof, a deed of assignment in favor of the National Government, which shall, in annexes thereto, describe, account by account, the nature and extent of such assets and to deliver to the Committee such agreements, instruments, records and other papers in respect of such assets as may be deemed by the Committee to be reasonably necessary or appropriate. Each such deed of assignment shall constitute the Minister of Finance in representation of the National Government as attorney-in-fact of the government institution empowered to take such action and do such things as may be necessary or desirable to consolidate and perfect the title of the National Government to such assets, exercising for the purpose, any and all rights and privileges appertaining to the transferor-government institution, pursuant to the provisions of applicable law or contract.

A copy of such deed of assignment, together with excerpts from its annexes describing particular property to be transferred, duly certified to be true by the appropriate official before a notary public or other official authorized by law to administer oaths, shall provide sufficient basis to registers of deeds, transfer agents of corporations and other persons authorized to issue certificates of titles, shares of stock and other evidence of title to issue new certificates, shares of stock or other instruments evidencing title to the assets so described to and in the name of the National Government or its duly authorized agent.

The transfer of any asset of government directly to the national government as mandated herein shall be for the purpose of disposition, liquidation and/or privatization only, any import in the covering deed of assignment to the contrary notwithstanding. Such transfer, therefore, shall not operate to revert such assets automatically to the general fund or the national patrimony, and shall not require specific enabling legislation to authorize their subsequent disposition, but shall remain as duly appropriated public properties earmarked for assignment, transfer or conveyance under the signature of the Minister of Finance or his duly authorized representative, who is hereby authorized for this purpose, to any disposition entity approved by the Committee pursuant to the provisions of this Proclamation.

Privatization Trust before it can fulfill its obligation to deliver a clean title to the property to respondent. Petitioner, as mortgagee of the property, can very well pay the tax liability and cause the cancellation of the tax lien. There was no legal impossibility to speak of, as the proviso in Section 219⁷⁵ of the National Internal Revenue Code states that “any mortgagee, purchaser or judgment creditor” to whom no tax lien shall be valid until notice of the lien is filed before the Register of Deeds. This suggests that the tax lien may be enforced against *any* mortgagee.

Petitioner cannot invoke Articles 1266⁷⁶ and 1267⁷⁷ of the Civil Code. These provisions—which release debtors from their obligations if they become legally or physical impossible or so difficult to be manifestly beyond the contemplation of the parties—only apply to obligations to do.⁷⁸ They do not apply to obligations to give as when a party is obliged to deliver a thing⁷⁹ which, in this case, is a certificate of title to a real property free from liens and encumbrances.

Interestingly, petitioner contends that it would have been liable for violating the Anti-Graft and Corrupt Practices Act if it paid the tax liability of Marinduque Industrial and Mining Corporation to cancel the tax lien on the property. According to petitioner:

[The Development Bank of the Philippines] is a government bank. To pay the taxes of a private corporation out of its coffers, and when such account was already transferred to a Government Liquidator, such as [the Asset Privatization Trust], would be a crime punishable under the Anti-Graft and Corrupt Practices Law, at the very least, not to mention the enormous amount of not less than ₱44 Mililion Pesos involved.⁸⁰ (Underscoring in the original)

This argument is wrong. A lien is a “legal claim or charge on property, either real or personal, as a collateral or security for the payment of

⁷⁵ TAX CODE, sec. 219 provides:

Sec. 219. Nature and Extent of Tax Lien. - If any person, corporation, partnership, joint-account (cuentas en participacion), association or insurance company liable to pay an internal revenue tax, neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the Government of the Philippines from the time when the assessment was made by the Commissioner until paid, with interests, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to the taxpayer: Provided, That this lien shall not be valid against any mortgagee, purchaser or judgment creditor until notice of such lien shall be filed by the Commissioner in the office of the Register of Deeds of the province or city where the property of the taxpayer is situated or located.

⁷⁶ CIVIL CODE, art. 1266 provides:

Art. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

⁷⁷ CIVIL CODE, art. 1267 provides:

Art. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

⁷⁸ See *Philippine National Construction Corporation v. Court of Appeals*, 338 Phil. 691, 700 (1997) [Per J. Davide, Jr., Third Division].

⁷⁹ Id.

⁸⁰ *Rollo*, p. 331.

some debt or obligation.”⁸¹ A lien, until discharged, follows the property. Hence, when petitioner acquired the property, the bank also acquired the liabilities attached to it, among them being the tax liability to the Bureau of Internal Revenue. That the unpaid taxes were incurred by the defunct Marinduque Industrial and Mining Corporation is immaterial. In acquiring the property, petitioner assumed the obligation to pay for the unpaid taxes.

Thus, should petitioner pay the remaining ₱24,311,997.41 to the Bureau of Internal Revenue, it would not be paying the taxes of a private corporation. It would be paying the liability attached to its own property, and there would be no violation of the Anti-Graft and Corrupt Practices Act.

II

With petitioner capable of having the tax lien cancelled, it cannot insist on the admission of its third-party complaint against the Asset Privatization Trust. The admission of a third-party complaint requires leave of court; the discretion is with the trial court. If leave is denied, the proper remedy is to file a complaint to be docketed as a separate case. As explained in *Firestone Tire and Rubber Company of the Philippines v. Tempongko*:⁸²

The third-party complaint, is therefore, a procedural device whereby a “third party” who is neither a party nor privy to the act or deed complained of by the plaintiff, may be brought into the case with leave of court, by the defendant, who acts as third party plaintiff to enforce against such third party defendant a right for contribution, indemnity, subrogation or any other relief, in respect of the plaintiff’s claim. The third party complaint is actually independent of and separate and distinct from the plaintiff’s complaint. Were it not for this provision of the Rules of Court, it would have to be filed independently and separately from the original complaint by the defendant against the third party. But the Rules permit defendant to bring in a third party defendant or so to speak, to litigate his separate cause of action in respect of plaintiff’s claim against a third party in the original and principal case with the object of avoiding circuitry of action and unnecessary proliferation of lawsuits and of disposing expeditiously in one litigation the entire subject matter arising from one particular set of facts. Prior leave of Court is necessary, so that where the allowance of a third party complaint would delay the resolution of the original case, such as when the third-party defendant cannot be located or where matters extraneous to the issue of possession would unnecessarily clutter a case of forcible entry, or the effect would be to introduce a new and separate controversy into the action, the salutary object of the rule would not be defeated, and the court should in such cases require the defendant to institute a separate action. When leave to file the third party complaint is properly granted, the Court renders in effect two judgments in the same case, one on the plaintiff’s complaint and the other on the third party complaint. When he finds favorably on both complaints, as in this

⁸¹ *People v. The Regional Trial Court of Manila*, 258-A Phil. 68, 76 (1989) [Per J. Sarmiento, Second Division].

⁸² 137 Phil. 239 (1969) [Per J. Teehankee, En Banc].

case, he renders judgment on the principal complaint in favor of plaintiff against defendant and renders another judgment on the third party complaint in favor of defendant as third party plaintiff, ordering the third party defendant to reimburse the defendant whatever amount said defendant is ordered to pay plaintiff in the case. Failure of any of said parties in such a case to appeal the judgment as against him makes such judgment final and executory. By the same token, an appeal by one party from such judgment does not inure to the benefit of the other party who has not appealed nor can it be deemed to be an appeal of such other party from the judgment against him.⁸³ (Citations omitted)

There was no grave abuse of discretion in denying leave to admit the third-party complaint against the Asset Privatization Trust. As the Court of Appeals observed, the trial court would have wasted time and effort had it admitted the third-party complaint. Respondent, the original plaintiff, had already rested its case when the Motion for Leave was filed. The original case would have dragged on with the addition of a new party at a late stage of the trial. We agree with the following discussion of the Court of Appeals:

While the Rules of Court does not provide a definite period in which a third-party complaint may be filed, Section 12, Rule 6 thereof requires leave of court before filing the same. Whether to grant such leave is entrusted to the discretion of the court.

We do not find any abuse of discretion on the part of the court *a quo* in denying the leave. It bears to emphasize that the rationale for permissive joinder of a third-party defendant who may be liable to the original defendant is judicial economy. This practice avoids multiplicity of actions and saves time and reduplication of effort by trying all issues together in one action. However, there is little economy in waiting to join the third-party defendant after the original plaintiff rested its case, as [the Development Bank of the Philippines] did in this case, especially when it tried to pass on its liability to [the Asset Privatization Trust] at the very first instance. Not only will the probable delay prejudice Clarges [Realty Corporation], there is also great possibility of prejudice to [the Asset Privatization Trust]. This is because the latter will be unable to defend against [Clarges Realty Corporation's] claim upon which its liability may depend.⁸⁴

III

Actual damages were correctly awarded to respondent.⁸⁵ The ₱163,929.00 that respondent incurred in having the mortgage lien cancelled was duly evidenced by an Official Receipt that was “a faithful reproduction

⁸³ Id. at 243–244.

⁸⁴ *Rollo*, p. 21.

⁸⁵ CIVIL CODE, art. 2199 provides:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

of the original.”⁸⁶ To reiterate, these expenses should not have been incurred had petitioner delivered a clean title to respondent, as it obliged itself in Clause 6 of the Deed of Absolute Sale.

The Court of Appeals correctly removed the Regional Trial Court’s award of ₱632.90 representing miscellaneous expenses and transportation expenses.⁸⁷ The official receipts supporting these expenses were not presented during trial; hence, it cannot be considered as incidental expenses in respondent’s acquisition of a clean title.

Finally, the award of attorney’s fees and cost of suit is proper. Respondent was compelled to bring the action for specific performance and incurred expenses in doing so. This ground is covered by Article 2208(2)⁸⁸ of the Civil Code, which allows for the recovery of attorney’s fees and expenses of litigation “[w]hen the defendant’s act or omission has compelled . . . to incur expenses to protect his interest.”


WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Decision dated June 22, 2005 of the Court of Appeals in CA-G.R. CV No. 56570 is **AFFIRMED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

⁸⁶ TSN, April 28, 1993, p. 19.

⁸⁷ *Rollo*, p. 23.

⁸⁸ CIVIL CODE, art. 2208(2) provides:

Art. 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other judicial costs, cannot be recovered, except:

....
(2) When the defendant’s act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest[.]


On leave
ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


ATTESTATION

I attest 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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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