

SPOUSES MICHOL AND VIRGINIA LARIZA, PLAINTIFFS-APPELLEES, V. SPOUSES RICARDO AND HERMINIA LOBITE, DEFENDANTS

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GALAPATE-LAGUILLES, J:

This is an Appeal from the Decision[1] dated August 15, 2008 of the Regional Trial Court, Branch 75, of Valenzuela City in Civil Case No. 56-V-04, the fallo of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendant Herminia G. Lobite ordering the latter to deliver to the plaintiffs all the unreturned pieces of jewelry described in the handwritten list marked as Exhibits “A” to “A-21” and any or all unremitted proceeds from the sale of entrusted pieces of jewelry, and in case delivery cannot be had and remit the proceeds of the sale, to pay the plaintiffs the total amount of P3,192,752.62 plus P200,000.00 for attorney's fees, P50,000.00 as litigation expenses and to pay costs.

SO ORDERED.[2]

The facts are culled from the records.

Virginia Lariza was engaged in the business of buying and selling jewelry. From October 2000 to January 2001, Virginia entrusted several jewelry items to Herminia Lobite, who was her neighbor and cumadre, with the obligation on the part of the latter to remit the proceeds of the sale or to return the pieces of jewelry if unsold. The transactions were covered by a handwritten list indicating the type of jewelry item and its corresponding price, which were properly receipted by Herminia.[3] It turned out, however, that Herminia failed to return some of the unsold pieces of jewelry to Virginia and likewise did not remit the proceeds of those she successfully sold.[4]

Also, during the same period, Herminia issued several post-dated checks in favor of Virginia in the total amount to P3,192,752.62,[5] to secure payment of the jewelry she sold.[6] When the said checks were presented for payment, the same were dishonored for either of the two reasons: (1) Account Closed; or (2) DAIF (Drawn Against Insufficient Fund).

Consequently, Virginia filed sixty three (63) cases for violation of B.P. 22 against Herminia as well as a separate Complaint for estafa. While the said criminal cases were pending, Virginia and her husband, Michol Lariza, filed the instant Complaint for Recovery of Property/Money and Damages[7] against the spouses Ricardo and Herminia Lobite alleging that:

C) As and by way of cause of action, at various dates covering the period 12 October 2000 to 10 January 2001, at Valenzuela City, Metro Manila, Defendant Herminia G. Lobite xxx had so approached the Plaintiff Virginia F. Lariza for several pieces of jewelry trust receipt transactions/agreements/arrangements, more particularly described below:

D) Anent Par. C above, Defendant Herminia G. Lobite had thereby caused Plaintiff Virginia F. Lariza to entrust to Defendant Herminia G. Lobite such several pieces of jewelry [worth about P3,000,000.00 total amount] then and there received from the herein Plaintiff Virginia F. Lariza by the herein Defendant Herminia G. Lobite, under such joint and mutual agreement that: (a) Defendant Herminia G. Lobite shall sell those

entrusted pieces of jewelry within four (4) months or 120 days from her receipts and, if not sold, return the same unsold pieces of jewelry to the Plaintiff Virginia F. Lariza; and (b) simultaneously with the delivery to and receipt by the Defendant Herminia G. Lobite of such entrusted pieces of jewelry, as security thereof, Defendant Herminia G. Lobite would issue to the plaintiff Virginia F. Lariza the corresponding post-dated checks with the Defendant Herminia G. Lobite's assurance that the same checks would be fully funded on their respective due dates;

E) However, since especially January-February 2001 onwards, with grave abuse of trust and confidence and false pretenses against the Plaintiffs, Defendant Herminia G. Lobite did not remit the cash sales proceeds of subject pieces of jewelry, as sold, to Plaintiff Virginia F. Lariza and, if unsold, did not return the same pieces of jewelry to Plaintiff Virginia F. Lariza; further, when presented for encashment, the sixty-three (63) corresponding post-dated Checks, issued by the Defendant Herminia G. Lobite to Plaintiff Virginia F. Lariza, all bounced and/or were dishonored by the bank for the reason: "Account Closed", to and upon the Defendant Herminia G. Lobite, notices of dishonor with demands to make good in cash payment all such dishonored Checks had been made but to no avail and to the prejudice of the Plaintiffs.

xxx

Spouses Lariza sought the immediate return of the pieces of jewelry that were unsold and remittance of the proceeds of the pieces sold. They also prayed for the award of damages in the amount of P1,200,000.00 and other equitable relief.

In their Answer,[8] spouses Lobite asserted that the transaction between Virginia and Herminia was not one of agency but a joint venture – that Virginia should supply Herminia with jewelry to sell and required her to issue post-dated checks to guarantee payment thereof. They further contended that they (spouses Lobite) contracted a loan from Mrs. Angelina Morte in the amount of P2,000,000.00, secured by their property covered by TCT No. 116956, to pay their obligation and to cover the value of the checks Herminia issued. According further to the spouses Lobite, the joint business failed when spouses Anelito Shan, one of Herminia's clients, bought jewelry worth millions of pesos by means of stale checks. This constrained Herminia to file a case for violation of B.P. 22 against Shan and his spouse, and that the same was known to Virginia.

By way of an affirmative defense, the defendants alleged that the filing of the instant complaint was tantamount to forum-shopping since Virginia had previously instituted several actions for violation of B.P. 22 against Herminia for the alleged issuance of worthless checks, which were docketed as Criminal Case Nos. 61473-61536, before the Metropolitan Trial Court, Branch 81, of Valenzuela City. The defendants thus prayed that the instant civil action be dismissed as it is related to the B.P. 22 cases.

Subsequently, spouses Lobite filed a Motion to Dismiss[9] arguing that the instant complaint was "clearly a recovery of civil liability" arising from the alleged issuances of worthless checks, which was deemed instituted with the filing of the criminal cases for violation of B.P. 22. The RTC, however, denied the motion in its Order dated October 20, 2004.[10]

Meantime, on March 30, 2004, upon motion of the plaintiffs spouses Lariza, the trial court issued a writ of preliminary attachment against the property of the spouses Lobite as security for the satisfaction of the monetary judgment that may be rendered against them. The effectivity of the said writ was subject to the condition of the posting of a bond by the plaintiffs.[11]

On June 1, 2004, the MTC, upon motion of Herminia and without objection from the public prosecutor, dismissed Criminal Case Nos. 61473-61536 due to plaintiff's lack of interest to prosecute.[12]

After the parties formally offered their respective evidence, the RTC rendered the assailed Decision in favor of the

spouses Lariza, the fallo of which We have quoted at the outset. It ruled that there was no forum-shopping because the subject matter of the present civil action was the recovery of property premised on Herminia's alleged fraudulent act in handling the pieces of jewelry entrusted to her while the thrust of the criminal cases was the issuance of bum checks. The RTC further ruled that the dismissal of the B.P. 22 cases would not bar recovery of civil liability against Herminia as the same were dismissed without adjudication on the merits.

Further, the RTC declared that the plaintiffs spouses Lariza failed to substantiate the civil liability of Ricardo Lobite. Anent Herminia Lobite's liability, the RTC held that as an agent of Virginia, the former is obliged to render an accounting of the sales proceeds and to return the unsold pieces of jewelry, viz:

Prescinding from our view that an agency governs the relationship of plaintiff Virginia Lariza and defendant Herminia Lobite, let it be stressed that it is the agent's duty to return the jewelry on demand of the owner. The demand for the return of the thing delivered in trust and the failure of the agent to account for it constitutes violation of her fiduciary duty.[13]

Aggrieved, Herminia filed a Motion for Reconsideration of the adverse Decision but the same was denied by the RTC in its Order dated March 2, 2009.[14] Hence, the present appeal ascribing the following errors to the RTC:

I

THE TRIAL COURT ERRED IN HOLDING THAT A CONTRACT OF AGENCY WAS CREATED BETWEEN PLAINTIFF-APPELLEE VIRGINIA LARIZA AND DEFENDANT-APPELLANT HERMINIA LOBITE FOR THE SALE OF THE PIECES OF JEWELRY AND NOT A PARTNERSHIP AS ALLEGED BY THE DEFENDANT-APPELLANT IN THE ANSWER.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE PLAINTIFFS-APPELLEES ARE ENTITLED TO THE DELIVERY OF THE SUBJECT PIECES OF JEWELRY AND UNREMITTED PROCEEDS OF THE SALE THEREOF OR TO THE PAYMENT OF P3,192,752.62.

III

THE TRIAL COURT ERRED IN NOT DISMISSING THE COMPLAINT ON THE GROUND THAT THE FILING THEREOF VIOLATED THE RULES AGAINST FORUM SHOPPING AND THAT IT IS BARRED BY A PRIOR DISMISSAL OF A PREVIOUS CASE DEEMED TO BE WITH PREJUDICE

IV

THE TRIAL COURT ERRED IN AWARDING P200,000.00 AS ATTORNEY'S FEES AND P50,000.00 AS LITIGATION EXPENSES, AS WELL AS IN ORDERING THE PAYMENT OF THE COSTS OF THE SUIT, TO THE PLAINTIFFS-APPELLEES.

V

THE TRIAL COURT ERRED IN NOT LIFTING THE WRIT OF ATTACHMENT AGAINST THE DEFENDANT-APPELLANT'S PROPERTIES, INCLUDING THE ATTACHMENT ON THE PROPERTY OF DEFENDANT RICARDO LOBITE WHO WAS ABSOLVED FROM ANY LIABILITY.[15]

Prefatorily, We address the procedural issue of whether the filing of the Complaint for recovery of property and/or money while the numerous cases for violation of B.P. 22 were still pending constitutes forum-shopping.

A party is guilty of forum-shopping where he repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and

circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court.[16] Forum shopping exists where the elements of *litis pendentia* are present, namely: 1) identity of parties, or at least such parties as those representing the same interests in both actions; 2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and 3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res adjudicata* in the other case.[17]

Here, the requisites of forum shopping do not exist. We stress that the present civil action seeks to recover the property and/or money that arose from the failure of Lobite to return the unsold pieces of jewelry and to remit the proceeds of those that were sold. The purpose of the action is to obtain civil indemnity for the injury suffered by the plaintiff. On the other hand, the criminal cases for violation of BP 22 came about because of the alleged issuance of post-dated checks which were either unfunded or drawn against insufficient funds. These criminal actions sought to punish the deleterious act of knowingly issuing bum checks. Furthermore, the parties in the two cases were also different. In criminal prosecution, the primary aggrieved party is the State and the private complainant Virginia merely acted as a witness to testify on the civil aspect of the case. In the present civil action, all parties are private individuals. Evidently, the two species of actions, one is criminal and the other is civil, differ in terms of causes of action as well as the relief prayed for and, consequently, a rendition of judgment in one case would not amount to *res judicata* in the other case. The following observation of the trial court is enlightening:

The criminal case for violation of B.P. 22 which was dismissed by the Metropolitan Trial Court of Valenzuela City, Branch 81[,] involves a violation of a penal law, one entirely different from the instant civil case which involves recovery of personal property. xxx [T]he trust of the civil case is principally based on the alleged fraudulent acts of defendant Herminia Lobite in the handling of the entrusted pieces of jewelry. The cause of action is primarily to recover possession of personal property unlawfully appropriated by the defendants. xxx[18]

We are cognizant of the rule laid down under Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure that with the filing of criminal cases for violation of B.P. 22, the civil action for the recovery of the amount of the checks was also impliedly instituted. The rule expressly provides that the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action.[19] Nevertheless, the civil action subject of this appeal, did not involve recovery of the amount of the bum checks issued by Herminia. As stated, the said civil action sought recovery of the unsold jewelry items as well as the proceeds of those that were sold. Although the present Complaint alleged the issuances of the post-dated checks and its subsequent dishonor as supportive of the cause of action, the civil action was not limited to the collection of the amount indicated therein. In fact, the issuances of the post-dated checks do not constitute a material fact necessary to obtain relief from the rights asserted by the spouses Lariza. Even without the said post-dated checks submitted as evidence, the spouses Lariza's cause of action is amply supported by other documentary evidence.

At any rate, the criminal actions for violation of B.P. 22 were already dismissed based on the prosecution's lack of interest, and no trial on the merits ensued thereon. Thus, to declare that there is forum-shopping will unduly deprive the spouses Lariza of their right to recover from Herminia's civil liability. Moreover, with the dismissal of the B.P. 22 cases, the evil sought to be avoided by the rule against forum-shopping, such as the vexation caused the courts and litigants by a party who asks different courts to rule on similar or related causes and/or grant the same or substantially similar reliefs, was nil. Simply stated, there is no possibility of having conflicting decisions being rendered upon the same issues.

That said, We now delve into the nature of the transaction between the parties. On one hand, the spouses Lariza

insisted that Herminia was Virginia's agent while on the other, Herminia argued that she was Virginia's business partner. We rule on the existence of agency.

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.[20] Agency is created by the intention of the parties by mean of an implied or express agreement; it may be oral or in writing.[21]

The records convincingly established that Herminia was an agent of Virginia. Virginia testified that they agreed as follows:

Q

When you had a business transaction with the defendant, did you have any arrangement with her?

A

Yes, sir.

Q

And this agreement is in what form: verbal or written?

A

Both verbal and written, sir.

Q

When you say "arrangement", will you tell the Honorable Court what was you arrangement with the defendants with respect to the pieces of jewelry you were selling?

A

For all items that will be sold, she will give me the proceeds, and the unsold items, she will return to me.[22]

That Herminia and Virginia's relationship was governed by the contract of agency was apparent in the following averments in the Answer: (1) that Herminia "agreed that plaintiff Virginia Lariza will supply jewels for sale"; (2) that "she (Herminia) will sell the same"; and (3) that "every transaction should be accounted for after the jewels were sold and paid." [23] Indeed, this kind of agreement is a veritable form of agency. In accordance with Article 1891 of the Civil Code, "every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency." The obligation of the agent to render an accounting cannot be waived by contrary stipulation.

Also, We cannot give credence to Herminia's assertion that she cannot be held civilly liable as an agent since "no Special Power of Attorney was submitted to establish such form of legal relationship." A special power of attorney is not necessary to prove the existence of agency as it can even be created by oral agreement. The said document is required only when the agent is tasked to perform the acts enumerated under Art. 1878 [24] of the Civil Code, which, incidentally, are not extant in this case.

Certainly, as an agent of Virginia, Herminia was unable to comply with her obligation to render an accounting upon demand. Herminia failed to present even a scintilla of evidence, either oral or documentary, to prove that she had settled every transaction she had with Virginia. To be sure, negative averments in the Answer did not constitute as sufficient evidence to refute Virginia's assertions that Herminia did not return the pieces of jewelry which she was not able to sell and that she did not remit the proceeds of the sold items as well. Virginia testified

as follows:

Q

After all these items mention in transactions 1 to 19, what happened to the unsold jewelry by the defendant Lobite?

A

Some were returned, but not all, sir.

Q

What about the amount representing the sale of the jewelry sold out by the defendant?

A

The other proceeds as well as the items were not returned to me, sir.

Q

Are we to say that some of the jewelry which were not sold were not returned to you?

A

Yes, sir.

Q

And also the amount or the proceeds of the sales of those items given by you to her, some were not given to you?

A

Yes, sir.[25]

xxx

Q

So do you mean to say that if the items that you gave to Herminia Lobite were not returned to you, it should have been considered as sold items, is that correct?

A

Yes, sir. She issued checks for those.

xxx

Q

Did Herminia Lobite remit the proceeds of the sale from October 2000 to January 2001?

A

Some of the proceeds were given to me, sir.

xxx

Q

You mean to say that Herminia Lobite had remitted some amounts to you?

A

Yes, sir.

Q

How did she remit those amounts?

A

Through checks, sir.

Q

Does this include the checks subject of this controversy?

A

Yes, sir, it is all included there[26]

We conducted a close scrutiny on spouses Lariza's documentary evidence composed of several transaction receipts containing the descriptions of the items of jewelry and its corresponding price, and found that Herminia signed and "received" each receipt. The same receipts also indicated which items were sold, returned, and those that were unsold but were not returned by Herminia. For purposes of computing Herminia's total monetary obligation, the unsold items that she withheld were considered "sold". Our findings were tabulated as follows:

Transaction Date

SOLD

RETURNED

TOTAL

Oct 12, 2000

269,400.00

127,900.00

397,300.00

Oct 13

158,500.00

82,700.00

241,200.00

Oct 30

244,400.00

136,500.00

380,900.00

Nov 6

105,600.00

399,200.00

504,800.00

Nov 14

319,800.00

971,835.00

1,291,635.00

Nov 21

488,915.00

804,192.00

1,293,107.00

Nov 30

206,270.00

206,270.00

Nov 30

92,015.00

109,671.00

201,686.00

Dec 7

838,630.00

459,330.00

1,297,960.00

Dec 9

151,000.00

151,000.00

Dec 14

646,900.00

491,642.00

1,138,542.00

Dec 15

214,300.00

126,080.00

340,380.00

Dec 27

831,500.00

831,500.00

Dec 27

142,916.00

333,500.00

476,416.00

Dec 28

268,400.00

268,400.00

Dec x[27]

256,900.00

334,200.00

591,100.00

Dec 2x[28]

315,400.00

453,200.00

768,600.00

Jan 5, 2001

397,050.00

235,900.00

632,950.00

Jan 10

536,00.00
311,250.00
847,250.00
=====

6,483,896.00

=====

5,377,100.00

=====

11,860,996.00

The above-cited findings reveal a marked difference from the worksheet summary[29] submitted by the spouses Lariza, which pegged the aggregate amount of the sold items at P7,368, 706.00; the returned amount at P4,940,058.00; and the total consigned amount at P12,308,764.00. The disparity in the respective amounts could be explained by the double entries in some of the transaction receipts such as those shown under Exhibits “A-2”[30] and “A-10”,[31] which We have excluded from Our computation. As testified to by Virginia, the post-dated checks issued by Herminia, in the total amount of P3,192,752.62,[32] were supposed to pay a portion of the total obligation. However, with the subsequent dishonor of the checks, We conclude that she must be held liable to pay the total amount of P6,483,896.00, which remains unaccounted for. Accordingly, the RTC erred when it directed Herminia to pay the corresponding amount of the bum checks she issued to Lariza as these checks did not represent her actual obligation.

As regards, the issue on attorney's fees, We find the same to be proper as the spouses Lariza were compelled to litigate for the protection of their right and thereby incurred expenses.[33] Nonetheless, We shall reduce the award of attorney's fees from P200,000.00 to an equitable amount of P50,000.00. Litigation expenses in the amount of P50,000.00 is also proper under the prevailing circumstances. Likewise, payment of costs of suit to the prevailing party is a matter of course, pursuant to Section 1, Rule 142 of the Revised Rules of Court, which reads:

“Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.”

Anent the validity of the writ of attachment issued against the properties of the spouses Herminia and Ricardo Lobite, suffice it to state that the same remains valid as security for the satisfaction of the monetary obligation of Herminia. This is so because the properties subject of the writ of attachment were presumed to be conjugal.[34] Thus, the debts and obligation contracted by Herminia are chargeable against their conjugal properties to the extent that the family may have been benefited thereby.[35]

WHEREFORE, the Decision dated August 15, 2008 of the Regional Trial Court, Branch 75, of Valenzuela City in Civil Case No. 56-V-04 is hereby **AFFIRMED** with the **MODIFICATIONS** that in case of Herminia Lobite's continuing failure to deliver the unreturned items of jewelry and the proceeds of those items she sold, the former shall pay the spouses Michol and Virginia Lariza the amount of P6,483,896.00, representing the total amount of sold and/or unreturned pieces of jewelry. Also, the award of attorney's fees in the amount of P200,000.00 is reduced to P50,000.00.

SO ORDERED.

Diamante[*] (Acting Chairperson) and Bueser,**] JJ., concur.

[*] Vice J. Mariflor P. Punzalan Castillo per Office Order No. 188-14-ABR dated May 6, 2014

**] Vice J. Amy C. Lazaro-Javier per Office Order No. 185-14-ABR dated May 5, 2014

[1] Records, pp. 325-333. Penned by Judge Maria Cecilia I. Austria.

[2] Records, pp. 310-311.

[3] Id., pp. 148-168.

[4] Tsn dated May 17, 2005, p. 16.

[5] Records, pp. 170-171. See also the photocopies of the checks, id., pp. 172-231.

[6] Tsn dated May 17, 2005, p. 18.

[7] Complaint. Records, pp. 1-3.

[8] Id., pp. 53-55.

[9] Id., pp. 83-84.

[10] Id., p. 106.

[11] Id., p. 11.

[12] Id., p. 295.

[13] Id., p. 309.

[14] Id., p. 334.

[15] Rollo, p. 42.

[16] Raymundo, et al. v. Tan, et al. G.R. No. 151266, November 29, 2005.

[17] Reyes de leon v. Del Rosario, G.R. No. 152862, July 26, 2004 citing Ayala Land, Inc., v. Valisno 381 Phil 518 [2000], Alejandrino v. Court of Appeals, 295 SCRA 536 [1998].

[18] Records, p. 310.

[19] Silangan Textiles Manufacturing Corporation, et al. v. Hon. Avelino Demetria, et al., G.R. No. 166719, March 12, 2007.

[20] Article 1868 of the Civil Code.

[21] Article 1869 of the Civil Code.

[22] Direct testimony of Lariza. Tsn dated May 17, 2005, pp. 9-10.

[23] Records, p. 53.

[24] Art. 1878. Special powers of attorney are necessary in the following cases:

(1) To make such payments as are not usually considered as acts of administration;

- (2) To effect novations which put an end to obligations already in existence at the time the agency was constituted;
- (3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;
- (4) To waive any obligation gratuitously;
- (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;
- (6) To make gifts, except customary ones for charity or those made to employees in the business managed by the agents;
- (7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;
- (8) To lease any real property to another person for more than one year;
- (9) To bind the principal to render some service without compensation;
- (10) To bind the principal in a contract of partnership;
- (11) To obligate the principal as guarantor or surety;
- (12) To create or convey real rights over immovable property;
- (13) To accept or repudiate an inheritance;
- (14) To ratify or recognize obligations contracted before the agency;
- (15) Any other act of strict dominion.

[25] Direct testimony of Lariza. TSN dated May 17, 2005, pp. 16-17.

[26] Testimony of Lariza during cross examination. *Id.*, pp. 32-34.

[27] Date not legibly written.

[28] Date not legibly written.

[29] Records, p. 169.

[30] *Id.*, p. 150.

[31] *Id.*, p. 158.

[32] *Id.*, p. 169.

[33] Article 2208, paragraph (2), Civil Code.

[34] Article 116 of the Family Code.

[35] Article 121 (3) of the Family Code.

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