

RICARDO C. ROA AND EMETERIO C. ROA, JR., PETITIONERS, VS. PH CREDIT CORPORATION, THE HONORABLE COURT OF APPEALS, AND THE REGIONAL TRIAL COURT, BRANCH 9, MANILA, RESPONDENTS.*G.R. No. 106037. June 15, 1993*

Ponente: QUIASON, J.

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This is an appeal by certiorari under Rule 45 of the Revised Rules of Court from the decision of the Court of Appeals in CA-G.R. SP. NO. 20515, entitled "Ricardo C. Roa, et al. v. PH Credit Corporation, et al.", denying the petition to annul the order of the Regional Trial Court, Branch 9, Manila, in Civil Case No. 88-45895.

The instant petition is related to three civil actions (Civil Case No. 8651 of the Court of First Instance of Misamis Oriental entitled "PH Credit Corporation v. Cagayan de Oro Management Corporation" for replevin; Civil Case No. 83-19224 of the Regional Trial Court, Branch I, Manila, entitled "PH Credit Corporation v. Cagayan de Oro Management Corporation, Emeterio Roa, Jr. and Ricardo Roa" for deficiency judgment and Civil Case No. 88-45895 of the Regional Trial Court, Branch 9, Manila, entitled "PH Credit Corporation v. Cagayan de Oro Management Corporation, Emeterio C. Roa and Ricardo Roa" for deficiency judgment) and three petitions for certiorari in the appellate court (CA-G.R. SP No. 04495 entitled "Cagayan de Oro Management Corporation, Ricardo C. Roa and Emeterio Roa, Jr. v. PH Credit Corporation and Hon. Rosalio C. Segundo, etc."; CA-G.R. SP No. 15845 entitled PH Credit Corporation v. Cagayan de Oro Management Corporation and CA-G.R. SP No. 20515 entitled "Ricardo Roa and Emeterio Roa, Jr. v. Credit Corporation and Hon. Edilberto G. Sandoval").

On July 8, 1982, PH Credit Corporation ("PH Credit") filed a "Complaint with Replevin" against Cagayan de Oro Management Corporation ("CMC") and one John Doe, in the Court of First Instance of Misamis Oriental and docketed as Civil Case No. 8651. Sought to be recovered was the possession of several tools and pieces of equipment and furniture subject of a chattel mortgage executed on July 23, 1979 by CMC in favor of PH Credit to secure the loan of P484,351.14. CMC filed a counterclaim, asking that it be discharged from the payment of three promissory notes which it allegedly executed after it was misled by the misrepresentation of PH Credit.

On July 29, 1983, PH Credit, without awaiting the final disposition of the replevin case, instituted a deficiency judgment suit against CMC in the Regional Trial Court, Branch 1, Manila and docketed as Civil Case No. 83-19224. The subjects of the deficiency judgment suit were three promissory notes all dated November 16, 1979 (PN No. 7911010634 for P745,004.35; PN No. 7911010635 for P144,417.96 and PN No. 7911010636 for P570,563.80). The complaint alleged that all the chattel and the real estate mortgages had been foreclosed but a balance of P2,810,734.30, inclusive of interest and penalties, had been left outstanding on the three promissory notes as of March 25, 1983.

In a petition for certiorari before the Intermediate Appellate Court (CA-G.R. SP No. 04495), said court dismissed on March 21, 1985, the complaint in Civil Case No. 83-19224 "without prejudice to its being refiled at the proper time." The appellate court noted that there was identity of rights asserted and reliefs sought in both the replevin

and the deficiency judgment suits.

Another reason given by the appellate court why Civil Case No. 83-19224 was dismissed was that it was premature for PH Credit to ask for deficiency judgment when the mortgage chattels had not yet been recovered, much less sold at public auction to satisfy the mortgage debt.

On August 27, 1987, the Regional Trial Court, Branch 20, Misamis Oriental (formerly the Court of First Instance of Misamis Oriental) dismissed Civil Case No. 8651 for failure of PH Credit to prosecute the case.

On August 22, 1988, PH Credit filed a third case in the Regional Trial Court, Branch 9, Manila, which was docketed as Civil Case No. 88-45895. In this action, PH Credit impleaded Emeterio Roa, Jr. and Ricardo Roa, herein petitioners, in place of CMC which had become insolvent.

Going back to the Regional Trial Court, Misamis Oriental, that Court issued an order on September 13, 1988 setting the hearing of Civil Case No. 8651 for the reception of evidence on the counterclaim. PH Credit brought a second certiorari case before the Court of Appeals (CA G.R. SP No. 15845) questioning the said Order of September 13, 1988.

On February 27, 1989, the Court of Appeals annulled the Order of September 13, 1988 of the Regional Trial Court, Misamis Oriental and prohibited the said trial court from proceeding with the trial on CMC's counterclaim. The Court of Appeals said that the counterclaim should have been dismissed for failure to prosecute after five years from the dismissal of the complaint. The appellate court also noted that the counterclaim therein was permissive and the filing fees thereof should have been paid.

Emeterio Roa, Jr. and Ricardo Roa filed a Motion to Dismiss dated September 16, 1988 in Civil Case No. 88--45895 on the grounds of *res judicata* and/or *litis pendencia*.

The proceedings in Civil Case No. 88-45895 were suspended pending the final disposition of the appeal in CA-GR SP No. 15845. After the Court of Appeals had annulled the Order of September 13, 1988, the Regional Trial Court, Branch 9, Manila, in an Order dated March 15, 1990, denied the Motion to Dismiss the complaint in Civil Case No. 88-45895.

Emeterio Roa, Jr. and Ricardo Roa contested the Order of March 15, 1990 of the Regional Trial Court, Branch 9, Manila before the Court of Appeals in CA-GR SP No. 20515, the third certiorari case filed in connection with the suits against CMC. The Court of Appeals dismissed the petition for certiorari, stating that neither the dismissal of the first deficiency judgment suit (Civil Case No. 88-19224) nor the dismissal of the replevin suit and counterclaim (Civil Case No. 8651) bars the prosecution of the second deficiency judgment suit. Hence, the instant petition for review.

Before this Court, petitioner claims that the complaint in Case No. 88-45895 is barred by the principle of *res judicata* by the order of the Regional Trial Court, Branch 20, Cagayan de Oro City, in Civil Case No. 8651, dismissing the complaint filed by PH Credit (Petition, pp. 4-5; Rollo, pp. 9-11).

The order in Civil Case No. 8651 stated:

"For failure of the plaintiff to prosecute this case for almost four years, this case is hereby dismissed for lack of interest on the part of plaintiff to prosecute this case under Section 3, Rule 17 of the New Rules of Court."

The principle of *res judicata* requires for its application that: (i) there be an earlier final judgment, (ii) the court which rendered it has jurisdiction over the subject matter and the parties, (iii) it is a judgment on the merits, and (iv) there is between the first and second actions, identity of parties, subject matter, causes of action and reliefs (*Francisco v. Blas*, 93 Phil. 1; *Diana v. Batangas, Transportation, Co.*, 93 Phil. 391; *Magdangal v. City of*

Olongapo, 179 SCRA 507 [1989]).

The instant petition cannot prosper regardless of whatever decision or order that petitioners may invoke as constituting *res judicata* to bar Civil Case No. 88--45895.

Civil Case No. 8651 was a *replevin* action to recover certain chattels mortgaged to PH Credit by CMC so that plaintiff therein could proceed to foreclose the chattel mortgage executed by CMC to secure its obligation to PH in the amount of P484,351.44.

On the other hand, Civil Case No. 88-45895 is an action for deficiency judgment on three promissory notes executed by CMC in favor of PH Credit.

The complaint in Civil Case No. 8651 alleged in substance that on July 25, 1979, CMC executed a chattel mortgage in favor of PH Credit to secure the payment of the principal obligation of P484,351.14; that CMC had violated the conditions of the chattel mortgage; that CMC was withholding from PH Credit the mortgaged chattels; and that CMC be ordered to turn over the possession of the chattels to the sheriff so that the foreclosure proceedings could proceed or in the alternative to pay PH Credit the sum of P484,351.14 with interests thereon.

The counterclaim of CMC in Civil Case No. 8651 asked for its discharge from the liability to pay the unnumbered promissory note dated July 5, 1978 for the amount of P687,816.96, PN No. 7812020299 dated December 22, 1978 for the amount of P627,200.00 and PN No. 7905010574 dated May 18, 1979 for the amount of P605,651.00.

The complaint in Civil Case No. 88-45895 for deficiency judgment alleges in substance that on November 16, 1979, CMC, Emeterio Roa, Jr.; Emeterio C. Roa, Jr. and Ricardo C. Roa, co-made in favor of PH Credit three promissory notes, namely PH No. 7911010634 for P745,004.34, PN No. 7911010635 for P144,417.96 and PN No. 7916010636 for P570,563.80; that to partially secure the payment of the PN No. 7911010634, CMC executed on November 20, 1980 a real estate mortgage and a chattel mortgage (over chattels sought to be replevied in Civil Case No. 8651); that to secure the payment of PN No. 7911010634 and PN No. 7911010635 CMC executed a real estate mortgage on November 20, 1980; that to secure the payment of PN 7911010636, CMC executed on December 24, 1980 a chattel mortgage over 12 motor vehicles; that upon failure of the co-makers of the notes to pay the loans, PH Credit foreclosed on the mortgages; and that after applying the proceeds of the foreclosure sale against the indebtedness, there remained as of March 25, 1983, a balance of P2,810,734.30 due PH Credit.

Clearly, there is, therefore, no identity of subject matter, causes of action and relief between Civil Case No. 8651 and Civil Case No. 88-45895.

Likewise, the dismissal of Civil Case No. 19224 by the Court of Appeals is not a judgment on the merits and cannot be considered as a conclusive adjudication of the controversy. The said dismissal was predicated on two grounds: the pendency of Civil Case No. 8651 and the prematurity of the cause of action, inasmuch as the foreclosure sale by PH credit could not proceed until it could recover possession of the chattels from CMC. A judgment in order to work as *res judicata* must be one on the merit. (*Molder v. Meller*, 104 Phil. 731). A judgment dismissing an action because of the pendency of another action between the same parties and for the same cause of action cannot operate as *res judicata*.

Finally, the decision of the Court of Appeals in CA-G.R. SP No. 04495, dismissing Civil Case No. 83-19224 expressly stated that such dismissal was "without prejudice to its being refiled at the proper time" (Decision, p. 6; Rollo, p. 91).

WHEREFORE, the decision of the Court of Appeals appealed from is **AFFIRMED** in toto. The petition is hereby **DENIED** for lack of merit and the case is **REMANDED** to the trial court for further proceedings.

SO ORDERED.

Cruz, (Chairman), Grino-Aquiño, and Bellosillo, JJ., concur.

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