

PATROCINIO YU, PETITIONER, VS. HON. COURT OF APPEALS AND TRADERS ROYAL BANK, RESPONDENTS.*G.R. No. 106818. May 27, 1994*

Ponente: VITUG, J.

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The issue in the instant petition for review on certiorari is whether or not the Court of Appeals has correctly affirmed the lower court's order dismissing Civil Case No. CEB-7483 on grounds of *litis pendentia*, prescription, estoppel and laches.

Petitioner Patrocinio Yu owned a drugstore, called Diding's Pharmacy, in Manalili Street, Cebu City. In furtherance of the business, Yu obtained from the Traders Royal Bank ("TRB") several loans secured by promissory notes, a chattel mortgage, letters of credit and trust receipts.

Yu's loans in time became due and demandable but, despite TRB's repeated demands, Yu failed to effect payment. Finally, on 31 January 1984, TRB filed a complaint against Yu with the Regional Trial Court of Cebu (Civil Case No. CEB-1765) for recovery of personal property, with an alternative prayer for payment of the due obligation. TRB based its complaint on the promissory notes and the chattel mortgage; no mention, however, was made of the trust receipts, although in the statement of account,[1] attached to the complaint, reference was made to unsettled obligations under two trust receipts (DTR 580-80 and DTR 588-80).

During the pendency of the case, TRB sought possession of the mortgaged chattels (drugs and medicine) for the purpose of effecting an extrajudicial foreclosure thereof. It obtained from the court a writ of replevin on 31 May 1985 upon its filing of a P10,000 bond. In view, however, of the protracted proceedings on the petition for the issuance of the writ, most of the drugs and medicine expired and apparently became valueless. TRB thus relented from further pursuing the replevin and concentrated, instead, on its alternate prayer for a sum of money.[2]

On 16 June 1987, TRB instituted before the Office of the City Fiscal of Cebu City a criminal complaint (I.S. No. 87-2502) against Yu and his wife for two counts of violation of the Trust Receipts Law (P.D. No. 115). The inquest fiscal was unmoved by Yu's defense that the trust receipts were null and void for being fictitious and simulated. The fiscal found a *prima facie* case against Yu, although his wife was exonerated from any charge. A reinvestigation was later conducted on the case upon order of the city fiscal. The previous finding, upon reinvestigation, was reiterated by the assistant city fiscal. The latter opined that the points raised by Yu in his motion for reinvestigation were "matters of defense" which he could well ventilate during the court trial.[3] Dissatisfied, Yu elevated the matter to the Department of Justice for review but the appeal, on 01 December 1988, was rejected for lack of merit and, additionally, because the appeal was filed beyond the reglementary period therefor.[4]

Two days after the filing of the criminal case, or on 18 June 1987, TRB instituted before the same court CEB-6035 against Yu for the recovery of sums of money. Its complaint,[5] this time, specifically mentioned the trust receipts in question. Yu moved to dismiss the complaint on the ground of *litis pendentia*, alleging that the

complaint was identical with Civil Case No. CEB-1765.[6] Yu called attention to the fact that the two cases involved the same promissory notes and letters of credit, including "LC 587/80 (DTR 588/80)" and "LC 590/80 (DTR 590/80)." The lower court,[7] on 10 September 1987, dismissed Civil Case No. CEB-6035.[8]

On 28 December 1988, Yu filed Civil Case No. CEB--7483[9] with the Regional Trial Court of Cebu City against TRB for the declaration of nullity of the two trust receipts, claiming that TRB made him sign the documents, apparently referring to the trust receipts, "which he did not fully understand." TRB filed a motion to dismiss the case on various grounds, i.e., the pendency of Civil Case No. CEB-1765, prescription, laches and estoppel. It alleged that Yu's complaint was aimed merely to delay the prosecution of the criminal case for violation of the Trust Receipts Law. On 22 March 1989, the lower court[10] granted the motion and dismissed Civil Case No. CEB-7483.

On appeal, the Court of Appeals[11] affirmed in toto the 22 March 1989 Order of the lower court. Hence, the instant petition for review on certiorari.

For *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res adjudicata* to the other.[12] In *Hongkong & Shanghai Bank vs. Aldecoa & Co.*, 30 Phil. 255, 274-275, this Court elaborated, thus:

"The principle upon which a plea of another action pending is sustained is that the latter action is deemed unnecessary and vexatious. (*Williams vs. Gaston*, 148 Ala., 214; 42 Sou., 552; 1 Cyc. 21; 1 R.C.L., sec. 1.) A statement of the rule to which the facts of the plea must conform in order to entitle the litigant to its benefits, and which has often met with approval, is found in *Watson vs. Jones* (13 Wall., 679, 715; 20 L. ed., 666):

"'But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or at least such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties.'

"It will be noted that the cases must be identical in a number of ways. It will be conceded that in so far as the plea is concerned, the parties are the same in the case at bar as they were in the action to have the mortgages annulled. Their position is simply reversed, the defendants there being the plaintiffs here, and vice versa. This fact does not affect the application of the rule. The inquiry must therefore proceed to the other requisites demanded by the rule. Are the same rights asserted? Is the same relief prayed for?

"The test of identity in these respects is thus stated in 1 Cyc., 28:

"'A plea of the pendency of a prior action is not available unless the prior action is of such a character that, had a judgment been rendered therein on the merits, such a judgment would be conclusive between the parties and could be pleaded in bar of the second action.'

"This test has been approved, citing the quotation, in *Williams vs. Gaston* (148 Ala., 214; 42 Sou., 552); *Van Vleck vs. Anderson* (136 Iowa, 366; 133 N.W., 853); *Wetzstein vs. Mining Co.* (28 Mont., 451; 72 P., 865). It seems to us that unless the pending action, which the appellants refer to, can be shown to approach the action at bar to this extent, the plea ought to fail.

"The former suit is one to annul the mortgages. The present suit is one for the foreclosure of the mortgages. It may be conceded that if the final judgment in the former action is that the mortgages be annulled, such an

adjudication will deny the right of the bank to foreclose the mortgages. But will a decree holding them valid prevent the bank from foreclosing them? Most certainly not. In such an event, the judgment would not be a bar to the prosecution of the present action. The rule is not predicated upon such a contingency. It is applicable, between the same parties, only when the judgment to be rendered in the action first instituted will be such that, regardless of which party is successful, it will amount to res adjudicata against the second action." (Underscoring supplied.)

In the case at bench, there is, except for the identity of parties, a substantial disparity between CEB-1765 and CEB-7483. In the former, TRB seeks the recovery of a sum of money from Yu on account of his unpaid loan obligations. In its complaint, TRB has not even alleged specifically the existence of the trust receipts, although, of course, it would appear that such trust receipts have been among the documents executed in order to secure the outstanding loans of Yu. In CEB-7483, Yu impugns the validity of the trust receipts which he claims to be null and void. It is clear that a judgment in either of the two cases will not necessarily foreclose the other on the mere basis of res adjudicata.

We agree, nonetheless, with both the court a quo and the appellate court in holding that the action in CEB-7483 has prescribed. Both courts have ratiocinated that Yu's cause of action in reality rests on fraud, an action which prescribes in four (4) years. Said courts did have good reasons, in our considered view, to thus conclude for, while Yu has ostensibly sought a declaration of nullity of the trust receipts, for being "simulated and fictitious," the complaint is bereft, however, of substantial factual allegations in support of this conclusion. Upon the other hand, clearly indicative of a case for annulment, rather than one of nullity, of the trust receipts is Yu's averment that he merely has been made to sign certain documents (the trust receipts) which "he did not fully understand." Even assuming that such a statement did not necessarily convey a case of fraud, it has, nevertheless, adequately impressed a situation, at least, of mistake or ignorance in the execution of the trust receipts. Whether the basis of Yu's cause of action is one of fraud or of mistake, the four-year prescriptive period for filing the case for annulment of the trust receipts would, in any case, govern (Art. 1391, in relation to Art. 1390, Civil Code).

The trust receipts were executed in 1980. A demand letter to make good Yu's obligation to the bank was made on 15 November 1982. The complaint of TRB was filed on 31 January 1984, and Yu received summons to answer CEB-1765 in February 1984. Reckoned from whichever date mentioned above, the filing of CEB-7483 on 18 December 1988 was way beyond the four-year statute of limitation prescribed in Article 1391[13] of the Civil Code. This is not to say, however, that petitioner would thereby be precluded from raising the invalidity of the trust receipts in the criminal charge for a violation of the Trust Receipts Law, a matter that is alien to the instant proceedings.

Having thus ruled, we find it inconsequential to still pass upon the other issues raised by the parties.

We cannot, however, end this ponencia without a word on the manner counsel for both parties have poorly regarded each other in their respective pleadings.[14] The use of intemperate language and unkind ascriptions, certainly less than civil, have contributed to the prolixity of argument in an otherwise simple case. While we do not consider the acts of both counsel grave enough to subject them to this Court's powers of contempt and discipline, we remind both counsel that Canon 8 of the Code of Professional Responsibility enjoins every lawyer to "conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel."

WHEREFORE, the decision of the Court of Appeals is hereby **AFFIRMED**, without special pronouncement on costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Exhs. H & H-1.

[2] Rollo, pp. 114 & 299.

[3] Record, p. 146.

[4] Ibid., p. 148.

[5] Ibid., pp. 101.

[6] Ibid., p. 107.

[7] Presided by Judge Bernardo Ll. Salas.

[8] Record, p. 110.

[9] Rollo, p. 116.

[10] Presided by Judge Esperanza F. Garcia.

[11] The decision was penned by Associate Justice Cezar D. Francisco and concurred in by Associate Justices Antonio M. Martinez and Emeterio C. Cui.

[12] Ramos v. Ebarle, 182 SCRA 245 citing Marapao v. Mendoza, 119 SCRA 97 and Lopez v. Villaruel, 164 SCRA 616.

[13] "ART. 1391. The action for annulment shall be brought within four years.

"This period shall begin:

"In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

"In case of mistake or fraud, from the time of the discovery of the same.

"And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases. (1301a)"

[14] Jose D. Palma and Jose C. Palma, Jr., counsel for petitioner Yu and Wilfredo F. Navarro of Hermosisima Sison & Inso, counsel for private respondent TRB.

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