

SPOUSES GIL AND NOELLI GARDOSE, PETITIONERS, VS. REYNALDO S. TARROZA, RESPONDENT.

G.R. No. 130570. May 19, 1998

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review on certiorari assailing the Decision of the Court of Appeals dated April 29, 1997 and its Resolution dated September 10, 1997 in CA-G.R. CV No. 45046.

On September 20, 1989, private respondent filed a complaint for a sum of money with preliminary attachment against the petitioners, spouses Gil and Noelli Gardose, and a certain Cecilia "Baby" Cacnio. The case was docketed as Civil Case No. Q-89-3500 and raffled to Branch 92 of the RTC of Quezon City, presided by then Judge Pacita Canizares-Nye.

On February 7, 1990, private respondent was allowed to summon by publication the petitioners who were abroad. On August 28, 1990, the complaint against the petitioners was dismissed for failure of the private respondent to have the summons published in a newspaper of general circulation within a reasonable time, amounting to failure to prosecute. The case against Cacnio was also later dismissed for failure of private respondent to file a pre-trial brief. The orders of dismissal became final and executory.

On February 13, 1991, private respondent filed a new complaint for a sum of money against the petitioners. The case was raffled to Branch 78 of the RTC of Quezon City and docketed as Civil Case No. Q-91-7959. The complaint contained the same allegations as the complaint in Civil Case No. Q-89-3500 except that it excluded Baby Cacnio as defendant.

On April 25, 1991, petitioners filed their Answer with Counterclaim. They invoked the principle of res judicata. They also alleged that Noelli Gardose issued the checks in question merely to guarantee the loans of Cacnio. Petitioners moved to dismiss the complaint on the ground of res judicata but failed. The case was set for hearing on the merits.

It appears that petitioners' counsel failed to appear in the hearing of March 31, 1992. The trial court allowed private respondent to present his evidence ex-parte but reset the continuation of the case to May 26, 1992 for cross-examination of the witness. The petitioners challenged the action of the trial court via a petition for certiorari but the challenge was dismissed by this Court on April 27, 1992.

The May 26, 1992 hearing for cross-examination of witness was reset to September 10, 1992 on motion of the petitioners. Again, petitioners failed to appear on September 10, 1992. The trial court considered petitioners' right of cross-examination waived and allowed private respondent to make a formal offer of his evidence. Still, the case was reset to October 15, 1992 to receive petitioners' evidence.

Through a new counsel, petitioners again moved for a reconsideration of the order denying their motion for dismissal on the ground of res judicata. They also insisted that they be allowed to cross-examine the private

respondent. In the hearing of October 15, 1992, the trial court denied the reiterated motion to dismiss. It reinstated petitioners' right to cross-examine but their new counsel refused to exercise the right during said hearing. It then ordered petitioners to present their evidence but said counsel sought a resetting of the case as he has yet to familiarize himself with its facts. The trial court ruled that petitioners have waived their right to cross-examine and right to present evidence. The case was deemed submitted for decision. Petitioners' motion for reconsideration was denied on March 15, 1993. They went to the Court of Appeals on certiorari, injunction and prohibition.[1] Their petition was denied on May 31, 1993.

On January 11, 1994, the trial court rendered its Decision in favor of the private respondent. It ordered:

"WHEREFORE, judgment is rendered ordering defendants to pay plaintiff the following:

- P70,000.00 plus interest thereon at 12% per annum from the date of the filing of the complaint until fully paid;
- P50,000.00 plus interest thereon at 12% per annum from the date of the filing of the complaint until fully paid;
- P200,000.00 plus interest thereon at 12% per annum from the date of the filing of the complaint until fully paid;
- P50,000.00 as and for attorney's fees; and
- Cost of suit."

Petitioners now contend:

I

The Court of Appeals gravely erred in not holding that the dismissal in the first case for failure to prosecute and for lack of interest had the effect of an adjudication on the merits and operates as res judicata to the second case.

II

The Court of Appeals gravely erred in not holding that the filing of the second case after dismissal of the first case for failure to prosecute and lack of interest constitutes forum shopping.

III

The Court of Appeals seriously erred in holding that since petitioners failed to include forum shopping as one of the grounds in their omnibus motion, they cannot now raise the said issue on appeal.

IV

The Court of Appeals gravely erred in holding that the petitioners were not denied procedural due process and they were not denied of their right to cross-examine private respondent and present their evidence.

V

The Court of Appeals gravely erred in considering petitioner Noelli Gardose as an accommodation party primarily and unconditionally liable to the private respondent for the three dishonored checks.

VI

The Court of Appeals gravely erred in awarding 12% interest on petitioners' alleged obligation to the private respondent as well as attorney's fees.

The petition is unmeritorious.

Firstly, the principle of res judicata cannot be invoked. The principle is enunciated in Section 49 (b) and (c) of Rule 39, viz:

"Sec. 49. Effects of judgments. -- The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

"xxx

(b) In other cases, the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

"(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

The rule in Section 49 (b) is known as "bar by former judgment" while the rule embodied in paragraph (c) of the same section is known as "conclusiveness of judgment". There are four (4) requisites which must concur in order for res judicata as a "bar by former judgment" to attach, viz: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be between the first and second action identity of parties, identity of subject matter and identity of causes of action.

The Court of Appeals correctly ruled that petitioners cannot rely on the principle of bar by former judgment. Civil Case No. Q-89-3500 was dismissed for the continuing failure of private respondent to effect service of summons by publication on the petitioners. In other words, the dismissal was made before the trial court acquired jurisdiction over the petitioners. In *Republic Planters Bank vs. Molina*,^[4] we held:

"xxx

"The questioned orders of the trial court in Civil Case No. 129829 supporting private respondent's motion to dismiss on the ground of res judicata are without cogent basis. We sustain petitioner's claim that respondent trial judge acted without or in excess of jurisdiction when he issued said orders because he thereby traversed the constitutional precept that 'no person shall be deprived of property without due process of law' and that jurisdiction is vitally essential for any order or adjudication to be binding. Justice cannot be sacrificed for technicality. Originally, the action for collection of the loan, evidenced by a promissory note, was only for P100,000.00 but petitioner claims that as of March 5, 1981, the obligation was already P429,219.74. It is a cardinal rule that no one must be allowed to enrich himself at the expense of another without just cause.

"In the very order of dismissal of Civil Case No. 116028, the trial court admitted that it did not acquire jurisdiction over the persons of private respondents and yet, it held that it was of no moment as to the dismissal

of the case. We disagree. For the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties. If it did not acquire jurisdiction over the private respondents as parties to Civil Case No. 116028, it cannot render any binding decision, favorable or adverse to them, or dismiss the case with prejudice which, in effect, is an adjudication on the merits. The controverted orders in Civil Case No. 116028 disregarded the fundamental principles of remedial law and the meaning and the effect of jurisdiction. A judgment, to be considered *res judicata*, must be binding, and must be rendered by a court of competent jurisdiction. Otherwise, the judgment is a nullity.

"The order of dismissal in Civil Case No. 116028 does not have the effect of an adjudication on the merits of the case because the court that rendered the same did not have the requisite jurisdiction over the persons of the defendants therein. This being so, it cannot be the basis of *res judicata* and it cannot be a bar to a lawful claim. If at all, such a dismissal may be considered as one without prejudice."

Secondly, petitioners' charge of forum shopping is baseless. To start with, petitioners did not raise the issue in the trial court. Moreover, Revised Circular No. 28-91, the anti-forum shopping rule, took effect on January 1, 1992, and it initially applied only to the Court of Appeals. Administrative Circular No. 04-94, which extended the application of the rule to trial courts and administrative agencies, took effect only on April 1, 1994. The second case against petitioners, Civil Case No. Q-91-7959, was filed on February 13, 1991 or before the effectivity of the rules on forum shopping on trial courts.

Thirdly, petitioners cannot claim denial of due process. The essence of due process is a fair opportunity to be heard. Petitioners were given all the opportunities to cross-examine the private respondent and to present their evidence. They failed to make use of these opportunities either through negligence or unpreparedness of their counsel. The right of private respondent to speedy justice is just as valuable as the right of petitioners to due process.

Fourthly, petitioner Noelli's defense that she was merely an accommodation party was rightly rejected by the Court of Appeals which ruled:

"xxx

"Appellants persistently insist that when appellant Noelli Gardose issued the three (3) checks to appellee she merely acted as a guarantor and therefore should not be held primarily liable to appellee.

"We disagree, the mere fact that appellant Noelli Gardose issued the three (3) checks to appellee make her liable to the latter without the need for the appellee to first go after Cecilia Cacnio because the relationship between an accommodation party and the party accommodated is in effect one of principal and surety (*Coneda, Jr. vs. Court of Appeals*, 181 SCRA 673; *Prudencio vs. Court of Appeals*, 143 SCRA 7). In the recent case of *Town Savings & Loan Bank, Inc. vs. Court of Appeals*, 223 SCRA 459, the Supreme Court held:

'An accommodation party is one who has signed the instrument as maker, drawer, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another (*The Phil. Bank of Commerce vs. Aruego*, 102 SCRA 530, 539, 540).'

"From the foregoing pronouncement of the Supreme Court, it is clear that appellant Noelli Gardose as an accommodation party is primarily and unconditionally liable to appellee for the three (3) checks that were dishonored by the drawee bank. Hence, the lower court did not err in ordering appellants to pay appellee the amount of THREE HUNDRED TWENTY THOUSAND P(320,000.00) PESOS with interest at 12% per annum

counted from the filing of the complaint. Under Section 151 of the Negotiable Instruments Law, when a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder (*Travel On, Inc. vs. Court of Appeals*, G.R. No. L-56169, June 26, 1992). The drawer of a negotiable instrument engages that, on due presentment, the instrument will be accepted or paid, or both, and if dishonored, he will pay the amount thereof to the holder. x x x"

Lastly, petitioners cannot assert that the award of 12% interest and attorney's fees to private respondent is not justified. The Court of Appeals correctly affirmed the trial court's monetary award to private respondent, viz:

"x x x The lower court was likewise correct in ordering appellants to pay interest at the legal rate of 12% per annum counted from the filing of the complaint. This is in accordance with Article 2209 of the Civil Code which provides that if the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, should be the payment of the interest agreed upon, and in the absence of stipulation, the legal rate of interest which is now 12 percent per annum. (*National Power Corporation vs. Agnar*, G.R. No. 60225-26, May 8, 1992). The trial court was likewise correct in granting attorney's fees in the amount of P50,000.00. As found by the court a quo, appellants acted in gross evident bad faith in refusing to pay appellee's just and demandable claim (*Reyes v. Zubirri*, 208 SCRA 561; *Maersk Line vs. Court of Appeals*, 222 SCRA 108)."

IN VIEW WHEREOF, the petition is dismissed. Costs against the petitioners.

SO ORDERED.

Regalado, (Chairman), Melo, Mendoza, and Martinez, JJ., concur.

[1] CA-G.R. SP No. 30871.

[2] CA-G.R. CV No. 45046.

[3] Penned by Associate Justice Demetrio G. Demetria and concurred in by Associate Justices Jinal D. Rasul and Godardo A. Jacinto.

[4] 166 SCRA 39.

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