SINCERE Z. VILLANUEVA, PETITIONER, VS. MARLYN P. NITE, RESPONDENT.

G.R. NO. 148211. July 25, 2006

Ponente: CORONA, J.

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CORONA, J.:

In this petition for review on certiorari under Rule 45, petitioner submits that the Court of Appeals (CA) erred in annulling and setting aside the Regional Trial Court (RTC) decision on the ground of extrinsic fraud.

The facts follow.[1]

Respondent allegedly took out a loan of P409,000 from petitioner. To secure the loan, respondent issued petitioner an Asian Bank Corporation (ABC) check (Check No. AYA 020195) in the amount of P325,500 dated February 8, 1994. The date was later changed to June 8, 1994 with the consent and concurrence of petitioner.

The check was, however, dishonored due to a material alteration when petitioner deposited the check on due date. On August 24, 1994, respondent, through her representative Emily P. Abojada, remitted P235,000 to petitioner as partial payment of the loan. The balance of P174, 000 was due on or before December 8, 1994.

On August 24, 1994, however, petitioner filed an action for a sum of money and damages (Civil Case No. Q-94-21495) against ABC for the full amount of the dishonored check. And in a decision dated May 23, 1997, the RTC of Quezon City, Branch 101 ruled in his favor.[2] When respondent went to ABC Salcedo Village Branch on June 30, 1997 to withdraw money from her account, she was unable to do so because the trial court had ordered ABC to pay petitioner the value of respondent's ABC check.

On August 25, 1997, ABC remitted to the sheriff a manager's check amounting to P325,500 drawn on respondent's account. The check was duly received by petitioner on the same date.

Respondent then filed a petition in the CA seeking to annul and set aside the trial court's decision ordering ABC to pay petitioner the value of the ABC check.[3] The CA ruled:

> WHEREFORE, premises considered, the petition is GRANTED and the Decision dated May 23, 1997 of the public respondent is hereby ANNULLED and SET ASIDE for extrinsic fraud.
>
> [Petitioner] Villanueva is hereby ordered to pay [Nite] -
>
> 1) the sum of [P146,500] as actual damages plus interest at 12% per annum from August 25, 1997 until full payment;
> 2) the sum of [P75,000] as moral damages;
> 3) the sum of [P50,000] as exemplary damages; and
> 4) the sum of [P50,000] as attorney's fees and cost of suit.
>
> SO ORDERED.[4]

Thus, this petition. We find for respondent.

Annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled is promulgated. It can be filed by one who was not a party to the case in which the assailed judgment was rendered. Section 1 of Rule 47 provides:

> Section 1. Coverage. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Respondent may avail of the remedy of annulment of judgment under Rule 47. The ordinary remedies of new trial, appeal and petition for relief were not available to her for the simple reason that she was not made a party to the suit against ABC. Thus, she was neither able to participate in the original proceedings nor resort to the other remedies because the case was filed when she was abroad.

Annulment of judgment may be based only on extrinsic fraud and lack of jurisdiction.[5] Extrinsic or collateral fraud pertains to such fraud which prevents the aggrieved party from having a trial or presenting his case to the court, or is used to procure the judgment without fair submission of the controversy.[6] This refers to acts intended to keep the unsuccessful party away from the courts as when there is a false promise of compromise or when one is kept in ignorance of the suit.[7]

We uphold the appellate court's finding of extrinsic fraud:

> Barely 6 days after receipt of the partial payment of P235,000.00 and agreeing that the balance of P174,000.00 shall be paid on or before December 8, 1994, [Sincere] filed his complaint against [ABC] for the full amount of the dishonored check in the sum of P320,500.00 without impleading petitioner. The apparent haste by which [Sincere] filed his complaint and his failure to implead [Marlyn] clearly shows his intent to prevent [Marlyn] from opposing his action.
>
> [A]t the time news about [Marlyn] having left the country was widespread, appearing even in print media as early as May 1994, [Marlyn] paid [Sincere] the amount of P235,000.00 as partial payment on [August 18, 1994], through a representative.
>
> Notwithstanding the foregoing, SIX (6) days later or on [August 24, 1994, Sincere] instituted an action for collection with damages for the whole amount of the issued check.
>
> [Sincere] does not deny knowledge of such payment neither of the fact that he concurred in settling the balance of P174,000.00 on December 8, 1994.
>
> [His] actuation and pronouncement shows not only bad faith on his part but also of his fraudulent intention to completely exclude [Marlyn] from the proceedings in the court a quo. By doing what he did he prevented the [trial court] from fully appreciating the particulars of the case.[8]

In any event, the RTC decision may be annulled for lack of jurisdiction over the person of respondent. The pertinent provisions of the Negotiable Instruments Law are enlightening:

> SEC. 185. Check, defined. - A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.[9] (emphasis ours)
>
> SEC. 189. When check operates as an assignment. - A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. (emphasis ours)

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If a bank refuses to pay a check (notwithstanding the sufficiency of funds), the payee-holder cannot, in view of the cited sections, sue the bank. The payee should instead sue the drawer who might in turn sue the bank. Section 189 is sound law based on logic and established legal principles: no privity of contract exists between the drawee-bank and the payee. Indeed, in this case, there was no such privity of contract between ABC and petitioner.

Petitioner should not have sued ABC. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.[10] None of the foregoing exceptions to the relativity of contracts applies in this case.

The contract of loan was between petitioner and respondent. No collection suit could prosper without respondent who was an indispensable party. Rule 3, Sec. 7 of the Rules of Court states:

> Sec. 7. Compulsory joinder of indispensable parties. - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. (emphasis ours)

An indispensable party is one whose interest in the controversy is such that a final decree will necessarily affect his rights. The court cannot proceed without his presence.[11] If an indispensable party is not impleaded, any judgment is ineffective.[12] On this, Aracelona v. Court of Appeals[13] declared:

> Rule 3, Section 7 of the Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being sine qua non for the exercise of judicial power. It is precisely "when an indispensable party is not before the court (that) the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

WHEREFORE, the petition is hereby DENIED. The decision of the Court of Appeals in CA-G.R. SP No. 44971 is AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[*]Some parts of the records refer to respondent as "Marilyn Nite."

[1] CA Decision in CA-G.R. SP No. 44971, rollo, pp. 29-30.

[2] Penned by Judge Pedro T. Santiago.

[3] CA-G.R. SP No. 44971: Marlyn P. Nite v. Hon. Pedro T. Santiago, as Judge of the RTC, Br. 101, Quezon City, Sincere Z. Villanueva and Asian Bank Corporation.

[4] Decision penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Godardo A. Jacinto and Bernardo P. Abesamis of the Ninth Division of the Court of Appeals; rollo, p. 35.

[5] RULES OF COURT, Rule 47, Sec. 2.

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[6] Regalado, REMEDIAL LAW COMPENDIUM (1999), National Bookstore, Inc., Manila, pp. 380 and 557.

[7] Id., pp. 380-381.

[8] Rollo, pp. 32-33.

[9] See Negotiable Instruments Law, Sections 126-183.

> SEC. 126. Bill of exchange, defined. - A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money or order or to bearer.
>
> SEC. 127. Bill not an assignment in hands of drawee. - A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. (emphasis ours)

[10]CIVIL CODE,Art. 1311.

[11] Regalado, supra note 6, at 83.

[12] Id.

[13] 345 Phil. 250, 267 (1997).

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