

**ERNESTO C. DEL ROSARIO AND DAVAO TIMBER CORPORATION,
PETITIONERS, VS. FAR EAST BANK & TRUST COMPANY AND
PRIVATE DEVELOPMENT CORPORATION OF THE PHILIPPINES,
RESPONDENTS.**

G.R. NO. 150134. October 31, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Regional Trial Court (RTC) of Makati City, Branch “65” (sic)[2] having, by Decision[3] of July 10, 2001, dismissed petitioners’ complaint in Civil Case No. 00-540 on the ground of res judicata and splitting of a cause of action, and by Order of September 24, 2001[4] denied their motion for reconsideration thereof, petitioners filed the present petition for review on certiorari.

From the rather lengthy history of the present controversy, a recital of the following material facts culled from the records is in order.

On May 21, 1974, petitioner Davao Timber Corporation (DATICOR) and respondent Private Development Corporation of the Philippines (PDCP) entered into a loan agreement under which PDCP extended to DATICOR a foreign currency loan of US \$265,000 and a peso loan of P2.5 million or a total amount of approximately P4.4 million, computed at the then prevailing rate of exchange of the dollar with the peso.

The loan agreement provided, among other things, that DATICOR shall pay: (1) a service fee of one percent (1%) per annum (later increased to six percent [6%] per annum) on the outstanding balance of the peso loan; (2) 12 percent (12%) per annum interest on the peso loan; and (3) penalty charges of two percent (2%) per month in case of default.

The loans were secured by real estate mortgages over six parcels of land – one situated in Manila (the Otis property) which was registered in the name of petitioner Ernesto C. Del Rosario, and five in Mati, Davao Oriental – and chattel mortgages over pieces of machinery and equipment.

Petitioners paid a total of P3 million to PDCP, which the latter applied to interest, service fees and penalty charges. This left petitioners, by PDCP’s computation, with an outstanding balance on the principal of more than P10 million as of May 15, 1983.

By March 31, 1982, petitioners had filed a complaint against PDCP before the then Court of First Instance (CFI) of Manila for violation of the Usury Law, annulment of contract and damages. The case, docketed as Civil Case No. 82-8088, was dismissed by the CFI.

On appeal, the then Intermediate Appellate Court (IAC) set aside the CFI’s dismissal of the complaint and declared void and of no effect the stipulation of interest in the loan agreement between DATICOR and PDCP.

PDCP appealed the IAC’s decision to this Court where it was docketed as G.R. No. 73198.

In the interim, PDCP assigned a portion of its receivables from petitioners (the receivables) to its co-respondent Far East Bank and Trust Company (FEBTC) under a Deed of Assignment dated April 10, 1987[5] for a consideration of P5,435,000. The Deed of Assignment was later amended by two Supplements.[6]

FEBTC, as assignee of the receivables, and petitioners later executed a Memorandum of Agreement (MOA) dated December 8, 1988 whereby petitioners agreed to, as they did pay FEBTC [7] the amount of P6.4 million as full settlement of the receivables.

On September 2, 1992, this Court promulgated its Decision in G.R. No. 73198[8] affirming in toto the decision of the IAC. It determined that after deducting the P3 million earlier paid by petitioners to PDCP, their remaining balance on the principal loan was only P1.4 million.

Petitioners thus filed on April 25, 1994 a Complaint[9] for sum of money against PDCP and FEBTC before the RTC of Makati, mainly to recover the excess payment which they computed to be P5.3 million[10] – P4.335 million from PDCP, and P965,000 from FEBTC. The case, Civil Case No. 94-1610, was raffled to Branch 132 of the Makati RTC.

On May 31, 1995, Branch 132 of the Makati RTC rendered a decision[11] in Civil Case No. 94-1610 ordering PDCP to pay petitioners the sum of P4.035 million,[12] to bear interest at 12% per annum from April 25, 1994 until fully paid; to execute a release or cancellation of the mortgages on the five parcels of land in Mati, Davao Oriental and on the pieces of machinery and equipment and to return the corresponding titles to petitioners; and to pay the costs of the suit.

As for the complaint of petitioners against respondent FEBTC, the trial court dismissed it for lack of cause of action, ratiocinating that the MOA between petitioners and FEBTC was not subject to this Court's Decision in G.R. No. 73198, FEBTC not being a party thereto.

From the trial court's decision, petitioners and respondent PDCP appealed to the Court of Appeals (CA). The appeal was docketed as CA-G.R. CV No. 50591.

On May 22, 1998, the CA rendered a decision[13] in CA-G.R. CV No. 50591, holding that petitioners' outstanding obligation, which this Court had determined in G.R. No. 73198 to be P1.4 million, could not be increased or decreased by any act of the creditor PDCP.

The CA held that when PDCP assigned its receivables, the amount payable to it by DATICOR was the same amount payable to assignee FEBTC, irrespective of any stipulation that PDCP and FEBTC might have provided in the Deed of Assignment, DATICOR not having been a party thereto, hence, not bound by its terms.

Citing Articles 2154[14] and 2163[15] of the Civil Code which embody the principle of solutio indebiti, the CA held that the party bound to refund the excess payment of P5 million[16] was FEBTC as it received the overpayment; and that FEBTC could recover from PDCP the amount of P4.035 million representing its overpayment for the assigned receivables based on the terms of the Deed of Assignment or on the general principle of equity.

Noting, however, that DATICOR claimed in its complaint only the amount of P965,000 from FEBTC, the CA held that it could not grant a relief different from or in excess of that prayed for.

Finally, the CA held that the claim of PDCP against DATICOR for the payment of P1.4 million had no basis, DATICOR's obligation having already been paid in full, overpaid in fact, when it paid assignee FEBTC the amount of P6.4 million.

Accordingly, the CA ordered PDCP to execute a release or cancellation of the mortgages it was holding over the

Mati real properties and the machinery and equipment, and to return the corresponding certificates of title to petitioners. And it ordered FEBTC to pay petitioners the amount of P965,000 with legal interest from the date of the promulgation of its judgment.

FEBTC's motion for reconsideration of the CA Decision was denied, and so was its subsequent appeal to this Court.

On April 25, 2000, petitioners filed before the RTC of Makati a Complaint[17] against FEBTC to recover the balance of the excess payment of P4.335 million.[18] The case was docketed as Civil Case No. 00-540, the precursor of the present case and raffled to Branch 143 of the RTC.

In its Answer,[19] FEBTC denied responsibility, it submitting that nowhere in the dispositive portion of the CA Decision in CA-G.R. CV No. 50591 was it held liable to return the whole amount of P5.435 million representing the consideration for the assignment to it of the receivables, and since petitioners failed to claim the said whole amount in their original complaint in Civil Case No. 94-1610 as they were merely claiming the amount of P965,000 from it, they were barred from claiming it.

FEBTC later filed a Third Party Complaint[20] against PDCP praying that the latter be made to pay the P965,000 and the interests adjudged by the CA in favor of petitioners, as well as the P4.335 million and interests that petitioners were claiming from it. It posited that PDCP should be held liable because it received a consideration of P5.435 million when it assigned the receivables.

Answering[21] the Third Party Complaint, PDCP contended that since petitioners were not seeking the recovery of the amount of P965,000, the same cannot be recovered via the third party complaint.

PDCP went on to contend that since the final and executory decision in CA-G.R. CV No. 50591 had held that DATICOR has no cause of action against it for the refund of any part of the excess payment, FEBTC can no longer re-litigate the same issue.

Moreover, PDCP contended that it was not privy to the MOA which explicitly excluded the receivables from the effect of the Supreme Court decision, and that the amount of P6.4 million paid by petitioners to FEBTC was clearly intended as consideration for the release and cancellation of the lien on the Otis property.

Replying,[22] FEBTC pointed out that PDCP cannot deny that it benefited from the assignment of its rights over the receivables from petitioners. It added that the third party claim being founded on a valid and justified cause, PDCP's counterclaims lacked factual and legal basis.

Petitioners thereafter filed a Motion for Summary Judgment[23] to which FEBTC filed its opposition.[24]

By Order of March 5, 2001, the trial court denied the motion for summary judgment for lack of merit.[25]

On July 10, 2001, the trial court issued the assailed Decision dismissing petitioners' complaint on the ground of res judicata and splitting of cause of action. It recalled that petitioners had filed Civil Case No. 94-1610 to recover the alleged overpayment both from PDCP and FEBTC and to secure the cancellation and release of their mortgages on real properties, machinery and equipment; that when said case was appealed, the CA, in its Decision, ordered PDCP to release and cancel the mortgages and FEBTC to pay P965,000 with interest, which Decision became final and executory on November 23, 1999; and that a Notice of Satisfaction of Judgment between petitioners and FEBTC was in fact submitted on August 8, 2000, hence, the issue between them was finally settled under the doctrine of res judicata.

The trial court moreover noted that the MOA between petitioners and FEBTC clearly stated that the "pending litigation before the Supreme Court of the Philippines with respect to the Loan exclusive of the Receivables

assigned to FEBTC shall prevail up to the extent not covered by this Agreement.” That statement in the MOA, the trial court ruled, categorically made only the loan subject to this Court’s Decision in G.R. No. 73198, hence, it was with the parties’ full knowledge and consent that petitioners agreed to pay P6.4 million to FEBTC as consideration for the settlement. The parties cannot thus be allowed to welsh on their contractual obligations, the trial court concluded.

Respecting the third party claim of FEBTC, the trial court held that FEBTC’s payment of the amount of P1,224,906.67 (P965,000 plus interest) to petitioners was in compliance with the final judgment of the CA, hence, it could not entertain such claim because the Complaint filed by petitioners merely sought to recover from FEBTC the alleged overpayment of P4.335 million and attorney’s fees of P200,000.

Petitioners’ motion for reconsideration[26] of the July 10, 2001 decision of the trial court was denied by Order of September 24, 2001.

Hence, the present petition.

In their Memorandum,[27] petitioners proffer that, aside from the issue of whether their complaint is dismissible on the ground of res judicata and splitting of cause of action, the issues of 1) whether FEBTC can be held liable for the balance of the overpayment of P4.335 million plus interest which petitioners previously claimed against PDCP in Civil Case No. 94-1610, and 2) whether PDCP can interpose as defense the provision in the Deed of Assignment and the MOA that the assignment of the receivables shall not be affected by this Court’s Decision in G.R. No. 73198, be considered.

Stripped of the verbiage, the only issue for this Court’s consideration is the propriety of the dismissal of Civil Case No. 00-540 upon the grounds stated by the trial court. This should be so because a Rule 45 petition, like the one at bar, can raise only questions of law (and that justifies petitioners’ elevation of the case from the trial court directly to this Court) which must be distinctly set forth.[28]

The petition is bereft of merit.

Section 47 of Rule 39 of the Rules of Court, on the doctrine of res judicata, reads:

Sec. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x

(b) In other cases, the judgment or final 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; and

(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 or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (Underscoring supplied)

The above-quoted provision lays down two main rules. Section 49(b) enunciates the first rule of res judicata known as “bar by prior judgment” or “estoppel by judgment,” which states that the judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal.[29]

Stated otherwise, “bar by former judgment” makes the judgment rendered in the first case an absolute bar to the subsequent action since that judgment is conclusive not only as to the matters offered and received to sustain it

but also as to any other matter which might have been offered for that purpose and which could have been adjudged therein. [30] It is in this concept that the term *res judicata* is more commonly and generally used as a ground for a motion to dismiss in civil cases.[31]

The second rule of *res judicata* embodied in Section 47(c), Rule 39 is “conclusiveness of judgment.” This rule provides that any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim or demand, purpose, or subject matter of the two suits is the same.[32] It refers to a situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined or which were necessarily included therein.[33]

The case at bar satisfies the four essential requisites of “bar by prior judgment,” viz:

(a)

finality of the former judgment;

(b)

the court which rendered it had jurisdiction over the subject matter and the parties;

(c)

it must be a judgment on the merits; and

(d)

there must be, between the first and second actions, identity of parties, subject matter and causes of action.[34]

There is no doubt that the judgment on appeal relative to Civil Case No. 94-1610 (that rendered in CA-G.R. CV No. 50591) was a final judgment. Not only did it dispose of the case on the merits; it also became executory as a consequence of the denial of FEBTC’s motion for reconsideration and appeal.[35]

Neither is there room to doubt that the judgment in Civil Case No. 94-1610 was on the merits for it determined the rights and liabilities of the parties.[36] To recall, it was ruled that: (1) DATICOR overpaid by P5.3 million; (2) FEBTC was bound to refund the excess payment but because DATICOR’s claim against FEBTC was only P965,000, the court could only grant so much as the relief prayed for; and (3) PDCP has no further claim against DATICOR because its obligation had already been paid in full. Right or wrong, that judgment bars another case based upon the same cause of action.[37]

As to the requisite of identity of parties, subject matter and causes of action, it cannot be gainsaid that the first case, Civil Case No. 94-1610, was brought by petitioners to recover an alleged overpayment of P5.3 million –P965,000 from FEBTC and P4.335 million from PDCP.

On the other hand, Civil Case No. 00-540, filed by the same petitioners, was for the recovery of P4.335 million which is admittedly part of the P5.3 million earlier sought to be recovered in Civil Case No. 94-1610. This time, the action was brought solely against FEBTC which in turn impleaded PDCP as a third party defendant.

In determining whether causes of action are identical to warrant the application of the rule of *res judicata*, the test is to ascertain whether the same evidence which is necessary to sustain the second action would suffice to authorize a recovery in the first even in cases in which the forms or nature of the two actions are different.[38] Simply stated, if the same facts or evidence would sustain both, the two actions are considered the same within

the rule that the judgment in the former is a bar to the subsequent action.

It bears remembering that a cause of action is the delict or the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff.[39]

In the two cases, petitioners imputed to FEBTC the same alleged wrongful act of mistakenly receiving and refusing to return an amount in excess of what was due it in violation of their right to a refund. The same facts and evidence presented in the first case, Civil Case No. 94-1610, were the very same facts and evidence that petitioners presented in Civil Case No. 00-540.

Thus, the same Deed of Assignment between PDCP and FEBTC, the first and second supplements to the Deed, the MOA between petitioners and FEBTC, and this Court's Decision in G.R. No. 73198 were submitted in Civil Case No. 00-540.

Notably, the same facts were also pleaded by the parties in support of their allegations for, and defenses against, the recovery of the P4.335 million. Petitioners, of course, plead the CA Decision as basis for their subsequent claim for the remainder of their overpayment. It is well established, however, that a party cannot, by varying the form of action or adopting a different method of presenting his case, or by pleading justifiable circumstances as herein petitioners are doing, escape the operation of the principle that one and the same cause of action shall not be twice litigated.[40]

In fact, authorities tend to widen rather than restrict the doctrine of res judicata on the ground that public as well as private interest demands the ending of suits by requiring the parties to sue once and for all in the same case all the special proceedings and remedies to which they are entitled.[41]

This Court finds well-taken then the pronouncement of the court a quo that to allow the re-litigation of an issue that was finally settled as between petitioners and FEBTC in the prior case is to allow the splitting of a cause of action, a ground for dismissal under Section 4 of Rule 2 of the Rules of Court reading:

SEC. 4. Splitting of a single cause of action; effect of. – If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others. (Emphasis and underscoring supplied)

This rule proscribes a party from dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions based on it.[42] Because the plaintiff cannot divide the grounds for recovery, he is mandated to set forth in his first action every ground for relief which he claims to exist and upon which he relies; he cannot be permitted to rely upon them by piecemeal in successive actions to recover for the same wrong or injury.[43]

Clearly then, the judgment in Civil Case No. 94-1610 operated as a bar to Civil Case No. 00-540, following the above-quoted Section 4, Rule 2 of the Rules of Court.

A final word. Petitioners are sternly reminded that both the rules on res judicata and splitting of causes of action are based on the salutary public policy against unnecessary multiplicity of suits – interest reipublicae ut sit finis litium.[44] Re-litigation of matters already settled by a court's final judgment merely burdens the courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases.[45]

WHEREFORE, the Petition is DENIED. The assailed Decision of the RTC, Branch 143, Makati dismissing petitioners' complaint in Civil Case No. 00-540 is AFFIRMED.

Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Now merged with the Bank of the Philippine Islands.

[2] The indication in the decision of the RTC Branch number as 65 is clearly erroneous. The records of the case show that the complaint was raffled to, and heard before Branch 143 presided by Judge Salvador S. Abad Santos.

[3] Rollo, pp. 27-30; penned by Judge Salvador S. Abad Santos.

[4] Records, p. 277.

[5] Rollo, pp. 148-154.

[6] Id. at 157-161. The First and Second Supplements were dated June 21, 1988 and September 1, 1988, respectively (cited in the 5th and 6th Whereas Clauses of the Memorandum of Agreement (MOA) between petitioners and FEBTC dated December 9, 1988).

[7] The payment of P6.4 million was made on December 9, 1988, a day after the MOA was executed by the parties.

[8] *Private Development Corporation of the Philippines v. Intermediate Appellate Court*, September 2, 1992, 213 SCRA 282.

[9] Records, pp. 8-15.

[10] Petitioners contended that the correct amount of this outstanding obligation was P1.1 million as they claimed that the Supreme Court made an error in computation; and since they had paid a total of P6.4 million, they were claiming a refund of P5.3 million. Rollo, p. 13.

[11] Records, pp. 16-21; penned by Judge Herminio I. Benito.

[12] According to the trial court, this was the amount by which the consideration for the assignment of the receivables exceeded the unpaid balance of P1.4 million.

[13] Records, pp. 23-31; penned by Justice Hilarion L. Aquino and concurred in by Justices Emeterio C. Cui (then, chairman of the CA Second Division) and Ramon U. Mabutas, Jr.

[14] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[15] Art. 2163. It is presumed that there was a mistake in the payment if something which had never been due or had already been paid was delivered; but he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause.

[16] This amount represents the difference between the P6.4 million paid by petitioners under the MOA and the outstanding obligation of P1.4 million.

[17] Records, pp. 1-7.

[18] This amount was later corrected by the trial court to be P4.035 million on the basis of the Manifestation and Motion filed by petitioners on January 5, 2001; Order dated February 28, 2001. Records, p.173.

[19] Id. at 49-52.

[20] Id. at 55-60. FEBTC's Third Party Complaint was admitted by the trial court in an Order dated July 14, 2000; id. at 101.

[21] Id. at 117-120.

[22] Id. at 128-129; dated September 19, 2000.

[23] Id. at 174-181; dated February 16, 2001.

[24] Id. at 183-186; Opposition to Motion for Summary Judgment dated February 26, 2001.

[25] Id. at 187; dated March 5, 2001.

[26] Id. at 259-263.

[27] Rollo, pp. 111-147.

[28] Section 1 of Rule 45 provides:

SECTION 1. Filing of petition with Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied)

[29] Orendain v. BF Homes, Inc., G.R. No. 146313, October 31, 2006, 506 SCRA 348, 365; Equitable Philippine Commercial International Bank v. Court of Appeals, G.R. No. 143556, March 16, 2004, 425 SCRA 544, 553; Development Bank of the Phil. v. Court of Appeals, 409 Phil. 717, 727 (2001); Smith Bell & Co., Inc. v. Court of Appeals, G.R. No. 59692, October 11, 1990, 190 SCRA 362, 370 citing Vda. De Cruz v. Carriaga, Jr., G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 338-339.

[30] Heirs of Rolando N. Abadilla v. Galarosa, G.R. No. 149041, July 12, 2006, 494 SCRA 675, 687; Dapar v. Biascan, G.R. No. 141880, September 27, 2004, 439 SCRA 179, 196; Oropeza Marketing Corporation v. Allied Banking Corp., 441 Phil. 551, 564 (2002).

[31] Vda. De Cruz v. Carriaga, Jr., supra note 29 at 339.

[32] Aromin v. Floresca, G.R. No. 160994, July 27, 2006, 496 SCRA 785, 806-807; Vda. De Cruz v. Carriaga, Jr., supra, p. 338.

[33] Heirs of Pael v. Court of Appeals, 461 Phil. 104, 124 (2003); Camara v. Court of Appeals, 369 Phil. 858, 866 (1999); Ybañez v. Court of Appeals, 323 Phil. 643, 655 (1996); Calalang v. Register of Deeds of Quezon City, G.R. No. 76265, April 22, 1992, 208 SCRA 215, 224.

[34] Mallion v. Alcantara, G.R. No. 141528, October 31, 2006, 506 SCRA 336, 343-344; Perez v. Court of Appeals, G.R. No. 157616, July 22, 2005, 464 SCRA 89, 106-107; Sps. Romero v. Tan, 468 Phil. 224, 239 (2004); Sta. Lucia Realty and Development Corporation v. Cabrigas, 411 Phil. 369, 386 (2001).

[35] Vide Allied Banking Corporation v. Court of Appeals, G.R. No. 108089, January 10, 1994, 229 SCRA 252, 259-260.

[36] Nabus v. Court of Appeals, G.R. No. 91670, February 7, 1991, 193 SCRA 732, 740.

[37] Perez v. Court of Appeals, supra note 34 at 107.

[38] Mallion v. Alcantara, supra note 32 at 345-346; Perez v. Court of Appeals, supra note 34 at 108.

[39]Heirs of Abadilla v. Galarosa, supra note 30 at 687. Vide RULES OF COURT, Rule 2, Sec. 2.

[40]Phil. Commercial International Bank v. Court of Appeals, 454 Phil. 338, 366 (2003); Esperas v. Court of Appeals, 395 Phil. 803, 811 (2000); Ybañez v. Court of Appeals, supra note 31 at 654; Allied Banking Corp. v. Court of Appeals, supra note 35 at 260.

[41]Valencia v. RTC of Quezon City, Br. 90, G.R. No. 82112, April 3, 1990, 184 SCRA 80, 92, citing Vda. De Cruz v. Carriaga, Jr., supra note 29 at 341-342.

[42]Perez v. Court of Appeals, supra note 34 at 104.

[43]Supra at 114.

[44]Camara v. Court of Appeals, supra note 33 at 865; Nabus v. Court of Appeals, supra note 36 at 738; Aguila, et al. v. J.M. Tuason & Co., Inc., et al., 130 Phil. 715, 720 (1968).

[45] Ibid.

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