

PHILIPPINE TRUST COMPANY PETITIONER, VS. FLORO ROXAS AND EUFEMIA ROXAS, RESPONDENTS.*G.R. No. 171897. October 14, 2015*

Ponente: JARDELEZA, J.

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We consider whether the principle of legal compensation may be applied to offset the judgment debt of petitioner Philippine Trust Company ("PTC") and the loan obligation of private respondents Floro and Eufemia Roxas ("Spouses Roxas").

I

The Spouses Roxas procured loans from PTC in the amount of Php 2,523,200 to finance their real estate business.[1] These loans were secured by real estate mortgages on the Spouses Roxas' real properties. On April 10, 1979, the Spouses Roxas, PTC, and Roben Construction and Furnishing Group, Inc. entered into "a contract of building construction," under which PTC granted an additional loan of Php 900,000 to the Spouses Roxas to enable them to finish their ongoing housing projects located at Cabcaben, Mariveles, Bataan. This was superseded by a new "contract of building construction" executed by and among PTC, Spouses Roxas, and Rosendo P. Dominguez, Jr. ("Dominguez"). Dominguez substituted Roben Construction as the contractor under the same terms and conditions of the contract dated April 10, 1979. The new contract stipulated that the money loaned from PTC shall be devoted to the funding of the housing projects, the rentals of which when finished, would then be used to liquidate the loan. It also provided that PTC may only release the proceeds of the loan for the purchase of materials and supplies when requested by Dominguez and with the conformity of the Spouses Roxas.[2] Invoices covering materials previously purchased with the funds should also be submitted to PTC before any subsequent release of funds is made.[3] PTC, however, released to Dominguez the sum of Php 870,000 out of the Php 900,000 although the Spouses Roxas had agreed only to the release of not more than Php 450,000, as evidenced by a promissory note dated April 11, 1979.[4]

Due to financial difficulties, however, the Spouses Roxas did not finish the housing project. As a result, they did not receive monthly rentals from prospective lessees of the houses, which led to missed amortization payments in their loans from PTC.[5]

On March 28, 1980, Dominguez filed a complaint against PTC and the Spouses Roxas with the Court of First Instance (CFI) of Manila,[6] Branch XL for breach of the contract of building construction. This was docketed as Civil Case No. 130783. The Spouses Roxas in turn filed Civil Case No. 130892 with the CFI of Manila against Dominguez and the insurance company that issued his performance bond. These two cases were later consolidated.[7]

When the Spouses Roxas filed their answer in Civil Case No. 130783, they included a cross-claim against PTC.[8] In response, PTC filed a counterclaim against the Spouses Roxas on their unpaid loan obligation

amounting to Php 3,053,738.50[9] plus interest and the amount of Php 245,720 as attorney's fees; and, in default of such payments, the foreclosure of the real estate mortgages executed by the Spouses Roxas in favor of PTC. After trial on the merits, the trial court rendered a decision in favor of Dominguez. It denied PTC's counterclaim for lack of sufficient proof, without prejudice to the filing of a collection suit against the Spouses Roxas. Both PTC and the Spouses Roxas appealed to the Court of Appeals, docketed as CA-G.R. CV No. 30340. To this date, the same remains pending.[10]

In a parallel development, while Civil Case No. 130783 was still pending in the trial court, PTC, on August 31, 1981, filed with the provincial sheriff of Bataan a petition for extrajudicial foreclosure of the same real estate mortgages. The Spouses Roxas opposed the petition and filed a verified complaint against PTC for damages with preliminary injunction in the Regional Trial Court of Bataan docketed as Civil Case No. 4809 ("Main Case"). The complaint sought to restrain and enjoin the sheriff from proceeding with the foreclosure sale while Civil Case No. 130783 is still pending.[11] On December 26, 1988, the Bataan RTC rendered a Decision in favor of the Spouses Roxas, the dispositive portion of which reads as follows:

WHEREFORE, the Court hereby renders judgment (a) Ordering the issuance of a writ of permanent injunction perpetually enjoining defendant Philippine Trust Company and defendant provincial sheriff of Bataan or any of his deputies from foreclosing extrajudicially the real estate mortgage(s) executed in its favor by plaintiffs covering the real properties subject of this action;

(b) Condemning said defendant bank to pay to plaintiffs: (1) Ordinary damages for breach of the provisions of the contract of building construction (Exhs. "B" & "26"), in the sum of One Hundred Thousand Pesos (P100,000.00); (2) Moral damages for the improvident extrajudicial foreclosure of plaintiffs' mortgage(s) after it had elected judicial foreclosure thereof, in the amount of Three Hundred Thousand Pesos (P300,000.00) for both plaintiffs; (3) Exemplary damages by way of example or correction for the public good in the sum of Fifty Thousand Pesos (P50,000.00); (4) Attorney's fees in the amount of Fifty Thousand Pesos (P50,000.00); and (5) Double costs of suit

SO ORDERED.[12]

The Court of Appeals affirmed the decision of the Bataan RTC. The decision became final and executory, prompting the Spouses Roxas to file a Motion for Execution. PTC responded by filing an Opposition to the Motion for Execution, where it raised for the first time legal compensation to offset the judgment debt due to the Spouses Roxas.

On January 25, 1994, the trial court denied PTC's Opposition and issued a writ of execution, holding that PTC is deemed to have waived legal compensation as a defense because it failed to invoke the same as an affirmative defense in its answer. PTC filed a motion for reconsideration of the order, which was denied by the trial court on April 19, 1994.[13] PTC filed another motion for reconsideration, which was again denied by the trial court on June 7, 1994.[14]

PTC filed a Petition for Certiorari[15] under Rule 65 with the Court of Appeals seeking the annulment of the trial court's order issuing the writ of execution and its subsequent orders denying PTC's motions for reconsideration. On November 17, 2005, the Court of Appeals dismissed the petition for lack of merit. It found that not all requisites of legal compensation under Article 1279 of the Civil Code were present and that the defense of legal compensation was belatedly raised by PTC, considering that it was raised for the first time at the execution stage.[16] The Court of Appeals denied PTC's motion for reconsideration on March 9, 2006.[17]

PTC then filed this Petition for Review on Certiorari[18] under Rule 45, arguing that the Court of Appeals erred in not finding that all the requisites of legal compensation were present and in ruling that the defense of

compensation was belatedly raised. PTC claims it did not raise legal compensation as a defense before the Bataan RTC because the judgment debt was not yet due at the time it filed its answer. Furthermore, it had already set up as a compulsory counterclaim the loan obligation of the Spouses Roxas in Civil Case No. 130783, which was pending with the former CFI of Manila. But because the Manila court denied PTC's counterclaims, PTC argues there is a change in the situation of the parties that makes execution inequitable.

In response, the Spouses Roxas assert that the execution of the Bataan RTC decision is proper because the prevailing party is entitled to a writ of execution as a matter of right once a judgment becomes final.[19] Moreover, the decision in Civil Case No. 130873 is not a supervening event that warrants the stay of execution.[20] The Spouses Roxas also dispute the applicability of legal compensation because both the demandability of the loan as well as the exact amount due had been put in issue in Civil Case No. 130873, which is now pending appeal with the Court of Appeals as CA-G.R. CV No. 30340.[21] The Spouses Roxas maintain that PTC is deemed to have waived compensation as a defense because it did not raise compensation either in a motion to dismiss or as an affirmative defense in its answer to the Main Case.[22] Finally, the Spouses Roxas point out that the orders of the Bataan RTC were challenged by PTC through a Rule 65 petition. Thus, it was incumbent upon PTC to prove lack or grave abuse of discretion on the part of the Bataan RTC, which PTC ultimately failed to do.[23]

The petition has no merit.

II

A

We agree with the Court of Appeals that it was too late for PTC to set up legal compensation as a defense because the Main Case had already reached the execution stage. The rule is that once a decision becomes final and executory, execution shall issue as a matter of right,[24] and the issuance of a writ of execution is the court's ministerial duty, compellable by mandamus.[25] This is in accordance with the doctrine of immutability of final judgments, which states that a judgment that has become final and executory is immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land.[26] Although there are recognized exceptions to this doctrine, one of which is where there is a supervening event that renders execution inequitable or unjust,[27] none obtains in this case.

First, there is nothing unjust or inequitable in the issuance of the writ of execution in this case because execution will have no effect on the unpaid loan obligation of the Spouses Roxas to PTC. The Spouses Roxas' unpaid loan obligation to PTC is the subject of a separate case now pending before the Court of Appeals, CA-G.R. CV No. 30340. Thus, there exists a proper forum where PTC may be allowed to recover whatever is due from the Spouses Roxas. What is inequitable is to allow PTC to recover its credit in full in CA-G.R. CV No. 30340 while concurrently being allowed to offset its judgment debt in this case. In such instance, there would effectively be double recovery on the part of PTC—which we cannot sanction because of the fundamental proscription against unjust enrichment.[28]

Second, it would be more unjust to stay the execution of a decision that had become final and executory twenty three (23) years ago. There should be an end to litigation, for public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[29] Unjustified delay in the enforcement of a judgment sets at naught the

role and purpose of the courts to resolve justiciable controversies with finality.[30] To accept PTC's contentions would not only be unfair to private respondents but, more importantly, would defeat a vital policy consideration behind the doctrine of immutability of final judgments.

B

The Bataan RTC and the Court of Appeals also correctly ruled that PTC should have raised the argument on legal compensation at the trial stage. The 1964 Rules of Court, which was then in effect at the time the Main Case was filed by the Spouses Roxas in 1980, provides that:

RULE 9. Effect of Pleadings

Sec. 2. Defenses and objections not pleaded deemed waived.— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5 of Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action.[31] (Emphasis added)

Although legal compensation takes place by operation of law, it must be alleged and proved as a defense by the debtor who claims its benefits. Only after it is proved will its effects retroact to the moment when all the requisites under Article 1279 of the Civil Code have concurred.[32]

PTC's contention that it could not have raised legal compensation as a defense because it was not yet a debtor of the Spouses Roxas when it filed its answer is unconvincing. Under Rule 8, Section 2 of the 1964 Rules of Court, "[a] party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses." [33] Thus, the defense of compensation would have been proper and allowed under the rules even if PTC disclaimed any liability at the time it filed its answer. In *Marquez v. Valencia*, [34] we held that when a defendant failed to set up such alternative defenses and chosen or elected to rely on one only, the overruling thereof was a complete determination of the controversy between the parties, which bars a subsequent action based upon an unpleaded defense. Unmistakably, the rationale behind this is the proscription against the splitting of causes of action.

In any case, even if PTC were excused from pleading compensation as a defense in its answer, we note that PTC still failed to raise this defense in its motion for reconsideration of the Bataan RTC decision and in its subsequent appeal. Hence, there can be no other conclusion than that PTC is already estopped from raising the issue of legal compensation.

It is fairly clear to us that the reason why PTC did not raise legal compensation as a defense in the Main Case is because it was banking on a favorable ruling on its counterclaim in the other case, Civil Case No. 130873. It was presumably an informed choice arrived at by PTC and its counsel, with full knowledge of the consequences of its failure to plead this specific claim/defense in the Main Case. Unfortunately for PTC, its counterclaim in the other case was disallowed. Having adopted the wrong legal strategy, PTC cannot now expediently change its theory of the case or its defense at the execution stage of the Main Case. Following the doctrine of election of remedies, [35] PTC's choice of setting up the Spouses Roxas' unpaid loan obligation as a counterclaim in Civil Case No. 130873, which has gone to judgment on the merits but is pending appeal, precludes it from raising compensation of the same loan obligation for the purpose of opposing the writ of execution in the Main Case. Equitable in nature, the doctrine of election of remedies is designed to mitigate possible unfairness to both parties. It rests on the moral premise that it is fair to hold people responsible for their choices. The purpose of the doctrine is not to prevent any

recourse to any remedy, but to prevent a double redress for a single wrong.[36]

III

Even if we assume that legal compensation was not waived and was otherwise timely raised, we find that not all requisites of legal compensation are present in this case. Under Article 1279, in order for legal compensation to take place, the following requisites must concur: (a) that each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (b) that both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (c) that the two debts be due; (d) that they be liquidated and demandable; and (e) that over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Here, the fourth requisite is absent. A debt is liquidated when its existence and amount are determined.[37] Compensation can only take place between certain and liquidated debts; it cannot extend to unliquidated, disputed claims.[38] Since the loan obligation, including its amount and demandability, is still being disputed in CA-G.R. CVNo. 30340, PTC's credit cannot be considered liquidated as of yet. Consequently, no legal compensation could have taken place between PTC's loan credit and the Spouses Roxas' judgment credit.

IV

Finally, we observe that PTC appears to have willfully engaged in forum shopping. PTC, in its own words, opposed the execution of the Bataan RTC decision because "'the Decision promulgated on September 4, 1990 by the RTC of Manila, Branch 40 [in Civil Case No. 130783] denied Petitioner's counterclaims.'"[39] Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court, other than by appeal or the special civil action of certiorari. More accurately, forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.[40]

The relief PTC now seeks is compensation of its judgment debt with the Spouses Roxas' loan obligation. In the other case, Civil Case No. 130783 (now CA-G.R. CV No. 30340), PTC asks for the payment of the same loan obligation of the Spouses Roxas. Essentially, PTC is seeking the same relief in both cases: the extinguishment of the Spouses Roxas' loan obligation. Under Article 1231 of the Civil Code, payment and compensation are modes of extinguishing an obligation. Although legally distinct, both must be pleaded in the same case if the obligation sought to be extinguished and the parties thereto are identical; otherwise, it would constitute splitting of causes of action.

Forum shopping exists when the elements of *litis pendentia* are present, viz.: (a) identity of parties, or at least such parties as those representing the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[41]

We find that the elements of *litis pendentia*—and, as a consequence, forum shopping—exist in this case. PTC's claim for legal compensation is founded on the same unpaid loan obligation now being litigated in CA-G.R. CV No. 30340. Although that case originated from a complaint filed by Dominguez for breach of contract, PTC counterclaimed the entire unpaid loan obligation, plus interest, owed to it by the Spouses Roxas. In other words, PTC had squarely put in issue the matter of the Spouses Roxas' indebtedness arising from the loans the latter obtained from PTC. It is immaterial that PTC's cause of action in the other case was set forth by way of a counterclaim, since the latter partakes of the nature of a complaint by the defendant against the plaintiff.[42] On

the other hand, while the Main Case originally involved a different subject matter and cause of action (i.e., the injunction against PTC's extrajudicial foreclosure and the Spouses Roxas' claim for damages) as that embraced in CA-G.R. CV No. 30340, the primary issue raised by PTC in its Opposition to the Motion for Execution, and subsequently in the petition for certiorari with the Court of Appeals and the present petition, pertained to the same loan obtained by the Spouses Roxas. Thus, with respect to the Spouses Roxas' indebtedness to PTC, there is a clear identity of parties, of subject matter, and of cause of action. Consequently, once a final decision in CA-G.R. CV No. 30340 is rendered, it will constitute *res judicata* and bar further litigation on the same loan obligation, including any dispute on the applicability or non-applicability of legal compensation.

Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes, and degrades the administration of justice and adds to the already congested court dockets.[43] Under Section 5 of Rule 8, willful and deliberate forum shopping is a ground for summary dismissal of the case and constitutes direct contempt of court, as well as a cause for administrative sanctions. The litigation could have ended promptly if PTC had simply paid its judgment debt and awaited the final decision in the other case to recover whatever is due from the Spouses Roxas. Instead, this plainly unmeritorious case had to clog our docket and take up the valuable time of this Court.

WHEREFORE, the petition for review is DENIED for lack of merit. The Decision dated November 17, 2005 and Resolution dated March 9, 2006 of the Court of Appeals in CA-G.R. SP No. 35203 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Velasco, Jr., (Chairperson), Villarama, Jr., Mendoza,[*] and Perlas-Bernabe,**] JJ., concur.

October 22, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____October 14, 2015____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 3, 2015 at 8:40 a.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

[*] Designated as Additional Member in lieu of Senior Associate Justice Antonio T. Carpio, per Special Order No. 2225 dated September 29, 2015.

**] Per raffle dated October 12, 2015.

[1] Rollo, p. 8.

[2] Id. at 8-9.

[3] Id. at 9.

- [4] Id.
- [5] Id.
- [6] Now the Regional Trial Court of Manila.
- [7] Rollo p. 9.
- [8] Id.
- [9] Id. at 93.
- [10] Id. at 67-68.
- [11] Id. at 58.
- [12] Id. at 58-59.
- [13] Id. at 111-112.
- [14] Id. at 118-119.
- [15] Id. at 120-140.
- [16] Id. at 20-21.
- [17] Id. at 26-27.
- [18] Id. at 31-52.
- [19] Id. at 234-235.
- [20] Id. at 235-236.
- [21] Id. at 237-242.
- [22] Id. at 242-245.
- [23] Id. at 232-234.
- [24] RULES OF COURT, Rule 39, Sec. 1.
- [25] Valenzona v. Court of Appeals, G.R. No. 106805, September 10, 1993, 226 SCRA 306, 311.
- [26] Edillo v. Dulpina, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 601 -602.
- [27] Valenzona v. Court of Appeals, *supra*.
- [28] Rodriguez v. Ponferrada, G.R. Nos. 155531-34, July 29, 2005, 465 SCRA 338, 355.
- [29] Times Transit Cooperative, Inc. v. NLRC, G.R. No. 117105, March 2, 1999, 304 SCRA 11, 17
- [30] Edillo v. Dulpina, *supra* at 602.
- [31] The 1997 Rules of Court modified the 1964 (ext but retained the same "deemed waived" provision:

RULE 9. Effect of Failure to Plead

Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on

record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (Emphasis added)

[32] IV ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 379 (1990); DE LEON & DE LEON, JR., COMMENTS AND CASES ON OBLIGATIONS AND CONTRACTS 441 (2014).

[33] Reproduced verbatim under the 1997 RULES OF Court.

[34] 99 Phil. 740 (1956), cited in *Arreza v. Diaz, Jr.*, G.R. No. 13343, August 30, 2001, 364 SCRA 88 97.

[35] *DM. Consunji, Inc. v. Court of Appeals*, G.R. No. 1.37873, April 20, 2001, 357 SCRA 249, 266. ("When a party having knowledge of the facts makes an election between inconsistent remedies, the election is final and bars any action, suit, or proceeding inconsistent with the elected remedy, in the absence of fraud by the other party. The first act of election acts as a bar")

[36] *Id.*

[37] *First United Constructors Corporation, v. Bayanihan Automotive Corporation*, G.R. No. 164985, January 15, 2014, 713 SCRA 354, 367.

[38] *Silahis Marketing Corp. v. Intermediate Appellate Court*, G.R. No. 74327, December 7, 1989, 180 SCRA 21, 25.

[39] *Rollo*, p. 45.

[40] *Young v. Keng Seng*, G.R. No. 143464, March 5, 2003, 398 SCRA 629, 636-637.

[41] *Ayala Land, Inc. v. Valisno*, G.R. No. 135899, February 2, 2000, 324 SCRA 522, 530-531.

[42] *Intramuros Administration v. Contacto*, G.R. No. 152576, May 5, 2003, 402 SCRA 581, 590.

[43] *Young v. Keng Seng*, *supra*.

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