BANCO DE ORO-EPCI, INC. (FORMERLY EQUITABLE PCI BANK), PETITIONER, VS. JOHN TANSIPEK, RESPONDENT.

G.R. No. 181235. July 22, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals in CA-G.R. CV No. 69130 dated 18 August 2006 and the Resolution of the same court dated 9 January 2008.

The facts of the case are as follows:

J. O. Construction, Inc. (JOCI), a domestic corporation engaged in the construction business in Cebu City, filed a complaint against Philippine Commercial and Industrial Bank (PCIB) in the Regional Trial Court (RTC) of Makati City docketed as Civil Case No. 97-508. The Complaint alleges that JOCI entered into a contract with Duty Free Philippines, Inc. for the construction of a Duty Free Shop in Mandaue City. As actual construction went on, progress billings were made. Payments were received by JOCI directly or through herein respondent John Tansipek, its authorized collector. Payments received by respondent Tansipek were initially remitted to JOCI. However, payment through PNB Check No. 0000302572 in the amount of P4,050,136.51 was not turned over to JOCI. Instead, respondent Tansipek endorsed said check and deposited the same to his account in PCIB, Wilson Branch, Wilson Street, Greenhills, San Juan, Metro Manila. PCIB allowed the said deposit, despite the fact that the check was crossed for the deposit to payee's account only, and despite the alleged lack of authority of respondent Tansipek to endorse said check. PCIB refused to pay JOCI the full amount of the check despite demands made by the latter. JOCI prayed for the payment of the amount of the check (P4,050,136.51), P500,000.00 in attorney's fees, P100,000.00 in expenses, P50,000.00 for costs of suit, and P500,000.00 in exemplary damages.

PCIB filed a Motion to Dismiss the Complaint on the grounds that (1) an indispensable party was not impleaded, and (2) therein plaintiff JOCI had no cause of action against PCIB. The RTC denied PCIB's Motion to Dismiss.

PCIB filed its answer alleging as defenses that (1) JOCI had clothed Tansipek with authority to act as its agent, and was therefore estopped from denying the same; (2) JOCI had no cause of action against PCIB ; (3) failure to implead Tansipek rendered the proceedings taken after the filing of the complaint void; (4) PCIB's act of accepting the deposit was fully justified by established bank practices; (5) JOCI's claim was barred by laches; and (6) the damages alleged by JOCI were hypothetical and speculative. PCIB incorporated in said Answer its counterclaims for exemplary damages in the amount of P400,000.00, and litigation expenses and attorney's fees in the amount of P400,000.00.

PCIB likewise moved for leave for the court to admit the former's third-party complaint against respondent Tansipek. The third-party complaint alleged that respondent Tansipek was a depositor at its Wilson Branch, San Juan, Metro Manila, where he maintained Account No. 5703-03538-3 in his name and/or that of his wife, Anita. Respondent Tansipek had presented to PCIB a signed copy of the Minutes of the meeting of the Board of

Directors of JOCI stating the resolution that -

> Checks payable to J.O. Construction, Inc. may be deposited to Account No. 5703-03538-3 under the name of John and/or Anita Tansipek, maintained at PCIB, Wilson Branch.[2]

Respondent Tansipek had also presented a copy of the Articles of Incorporation of JOCI showing that he and his wife, Anita, were incorporators of JOCI, with Anita as Treasurer. In the third-party complaint, PCIB prayed for subrogation and payment of attorney's fees in the sum of P400,000.00.

PCIB filed a Motion to Admit Amended Third-Party Complaint. The amendment consisted in the correction of the caption, so that PCIB appeared as Third-Party Plaintiff and Tansipek as Third-Party Defendant.

Upon Motion, respondent Tansipek was granted time to file his Answer to the Third-Party Complaint. He was, however, declared in default for failure to do so. The Motion to Reconsider the Default Order was denied.

Respondent Tansipek filed a Petition for Certiorari with the Court of Appeals assailing the Default Order and the denial of the Motion for Reconsideration. The Petition was docketed as CA-G.R. SP No. 47727. On 29 May 1998, the Court of Appeals dismissed the Petition for failure to attach the assailed Orders. On 28 September 1998, the Court of Appeals denied respondent Tansipek's Motion for Reconsideration for having been filed out of time.

Pre-trial on the main case ensued, wherein JOCI and PCIB limited the issues as follows:

> 1. Whether or not the defendant bank erred in allowing the deposit of Check No. 0302572 (Exh. "A") in the amount of P4,050,136.51 drawn in favor of plaintiff JO Construction, Inc. in John Tansipek's account when such check was crossed and clearly marked for payee's account only.
>
> 2. Whether the alleged board resolution and the articles of Incorporation are genuine and a valid defense against plaintiff's effort to collect the amount of P4,050,136.51.

On 14 July 2000, the RTC promulgated its Decision in Civil Case No. 97-508, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff [JOCI] and against the defendant bank [PCIB] ordering the latter to pay to the plaintiff the sum of P4,050,136.51 with interest at the rate of twelve percent (12%) per annum from the filing of this complaint until fully paid plus costs of suit. The other damages claimed by the plaintiff are denied for being speculative.
>
> On the third party complaint, third-party defendant John Tansipek is ordered to pay the third-party plaintiff Philippine Commercial and Industrial Bank all amounts said defendant/third-party plaintiff shall have to pay to the plaintiff on account of this case.[3]

Respondent Tansipek appealed the Decision to the Court of Appeals. The case was docketed as CA-G.R. CV No. 69130. Respondent Tansipek assigned the following alleged errors:

> a) The trial court's decision upholding the order of default and the consequent ex-parte reception of appellee's evidence was anchored on erroneous and baseless conclusion that:
>
> 1) The original reglementary period to plead has already expired.
>
> 2) The ten day extended period to answer has likewise expired.
>
> 3) There is no need to pass upon a second motion to plead much less, any need for a new motion for extended period to plead.
>
> b) The trial court erred in utterly depriving the appellant of his day in court and in depriving constitutional,

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> substantive and procedural due process premised solely on pure and simple technicality which never existed and are imaginary and illusory.
>
> c) The trial court erred in ordering the third-party defendant-appellant John Tansipek to pay the third party plaintiff-appellee PCIBank all amounts said bank shall have to pay to the plaintiff-appellee by way of subrogation since appellant if allowed to litigate in the trial court, would have obtained a favorable judgment as he has good, valid and meritorious defenses.[4]

On 18 August 2006, the Court of Appeals issued the assailed Decision finding that it was an error for the trial court to have acted on PCIB's motion to declare respondent Tansipek in default. The Court of Appeals thus remanded the case to the RTC for further proceedings, to wit:

> WHEREFORE, premises considered, the appeal is GRANTED. The decision relative to the third party complaint is REVERSED and SET ASIDE. The case is ordered REMANDED to the trial court for further proceedings on the third party complaint.[5]

The Court of Appeals denied the Motion for Reconsideration of PCIB in a Resolution dated 9 January 2008.

Petitioner Banco de Oro-EPCI, Inc., as successor-in-interest to PCIB, filed the instant Petition for Review on Certiorari, assailing the above Decision and Resolution of the Court of Appeals, and laying down a lone issue for this Court's consideration:

> WHETHER OR NOT THE COURT OF APPEALS CAN REVERSE ITS DECISION HANDED DOWN EIGHT YEARS BEFORE.[6]

To recapitulate, upon being declared in default, respondent Tansipek filed a Motion for Reconsideration of the Default Order. Upon denial thereof, Tansipek filed a Petition for Certiorari with the Court of Appeals, which was dismissed for failure to attach the assailed Orders. Respondent Tansipek's Motion for Reconsideration with the Court of Appeals was denied for having been filed out of time. Respondent Tansipek did not appeal said denial to this Court.

Respondent Tansipek's remedy against the Order of Default was erroneous from the very beginning. Respondent Tansipek should have filed a Motion to Lift Order of Default, and not a Motion for Reconsideration, pursuant to Section 3(b), Rule 9 of the Rules of Court:

> (b) Relief from order of default.--A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

A Motion to Lift Order of Default is different from an ordinary motion in that the Motion should be verified; and must show fraud, accident, mistake or excusable neglect, and meritorious defenses.[7] The allegations of (1) fraud, accident, mistake or excusable neglect, and (2) of meritorious defenses must concur.[8]

Assuming for the sake of argument, however, that respondent Tansipek's Motion for Reconsideration may be treated as a Motion to Lift Order of Default, his Petition for Certiorari on the denial thereof has already been dismissed with finality by the Court of Appeals. Respondent Tansipek did not appeal said ruling of the Court of Appeals to this Court. The dismissal of the Petition for Certiorari assailing the denial of respondent Tansipek's Motion constitutes a bar to the retrial of the same issue of default under the doctrine of the law of the case.

In People v. Pinuila,[9] we held that:

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> "Law of the case" has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.
>
> It may be stated as a rule of general application that, where the evidence on a second or succeeding appeal is substantially the same as that on the first or preceding appeal, all matters, questions, points, or issues adjudicated on the prior appeal are the law of the case on all subsequent appeals and will not be considered or readjudicated therein.
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> As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing.
>
> Questions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion. (Emphasis supplied.)

The issue of the propriety of the Order of Default had already been adjudicated in Tansipek's Petition for Certiorari with the Court of Appeals. As such, this issue cannot be readjudicated in Tansipek's appeal of the Decision of the RTC on the main case. Once a decision attains finality, it becomes the law of the case, whether or not said decision is erroneous.[10] Having been rendered by a court of competent jurisdiction acting within its authority, the judgment may no longer be altered even at the risk of legal infirmities and errors it may contain.[11]

Respondent Tansipek counters that the doctrine of the law of the case is not applicable, inasmuch as a Petition for Certiorari is not an appeal. Respondent Tansipek further argues that the Doctrine of the Law of the Case applies only when the appellate court renders a decision on the merits, and not when such appeal was denied due to technicalities.

We are not persuaded.

In Buenviaje v. Court of Appeals,[12] therein respondent Cottonway Marketing Corporation filed a Petition for Certiorari with this Court assailing the Decision of the National Labor Relations Commission (NLRC) ordering, inter alia, the reinstatement of therein petitioners and the payment of backwages from the time their salaries were withheld up to the time of actual reinstatement. The Petition for Certiorari was dismissed by this Court. The subsequent Motion for Reconsideration was likewise denied. However, the Labor Arbiter then issued an Order limiting the amount of backwages that was due to petitioners. The NLRC reversed this Order, but the Court of Appeals reinstated the same. This Court, applying the Doctrine of the Law of the Case, held:

> The decision of the NLRC dated March 26, 1996 has become final and executory upon the dismissal by this Court of Cottonway's petition for certiorari assailing said decision and the denial of its motion for reconsideration. Said judgment may no longer be disturbed or modified by any court or tribunal. It is a fundamental rule that when a judgment becomes final and executory, it becomes immutable and unalterable, and any amendment or alteration which substantially affects a final and executory judgment is void, including the entire proceedings held for that purpose. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court. A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous. The writ of execution must therefore conform to the judgment to be executed and adhere strictly to the very essential particulars.[13] (Emphases supplied.)

Furthermore, there is no substantial distinction between an appeal and a Petition for Certiorari when it comes to the application of the Doctrine of the Law of the Case. The doctrine is founded on the policy of ending litigation. The doctrine is necessary to enable the appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal.[14]

Likewise, to say that the Doctrine of the Law the Case applies only when the appellate court renders a decision on the merits would be putting a premium on the fault or negligence of the party losing the previous appeal. In the case at bar, respondent Tansipek would be awarded (1) for his failure to attach the necessary requirements to his Petition for Certiorari with the Court of Appeals; (2) for his failure to file a Motion for Reconsideration in time; and (3) for his failure to appeal the Decision of the Court of Appeals with this Court. The absurdity of such a situation is clearly apparent.

It is important to note that a party declared in default - respondent Tansipek in this case - is not barred from appealing from the judgment on the main case, whether or not he had previously filed a Motion to Set Aside Order of Default, and regardless of the result of the latter and the appeals therefrom. However, the appeal should be based on the Decision's being contrary to law or the evidence already presented, and not on the alleged invalidity of the default order.[15]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 69130 dated 18 August 2006 and the Resolution of the same court dated 9 January 2008 are hereby REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Makati City in Civil Case No. 97-508 dated 14 July 2000 is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Roberto A. Barrios and Mario L. Guariña III, concurring. Rollo, pp. 7-14.

[2] Rollo, p. 9.

[3] CA rollo, p. 60.

[4] Rollo, p. 11.

[5] Id. at 14.

[6] Id. at 28.

[7] Montinola, Jr. v. Republic Planters Bank, G.R. No. 66183, 4 May 1988, 161 SCRA 45, 54.

[8] Barraza v. Campos, Jr., G.R. No. L-50437, 28 February 1983, 120 SCRA 881, 888.

[9] 103 Phil. 992, 999 (1958).

[10] Enriquez v. Court of Appeals, G.R. No. 83720, 4 October 1991, 202 SCRA 487, 492.

[11] San Juan v. Cuento, G.R. No. L-45063, 15 April 1988, 160 SCRA 277, 284.

[12] 440 Phil. 84 (2002).

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[13] Id. at 93-94.

[14] People v. Pinuila, supra note 9.

[15] See Lina v. Court of Appeals, 220 Phil. 311, 317 (1985); Cerezo v. Tuazon, 469 Phil. 1020, 1036-1037 (2004).

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