

LEVY HERMANOS, INC., PLAINTIFF AND APPELLANT, VS. MONICA DE GOROSPE AND JOSE GOROSPE, DEFENDANTS AND APPELLEES.

G.R. No. 48671. September 30, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

On June 18, 1938, the plaintiff sued the defendants in the Court of First Instance of Manila for the replevin of one Terraplane automobile and the rescission of its sale, alleging that the purchaser, the defendant Monica de Gorospe, had failed to pay the series of promissory notes representing the balance of its purchase price, which fell due on the 21st of each of the months of November, 1937, to May, 1938, inclusive. On March 28, 1939, after the defendants had been declared in default for failure to answer the complaint, the attorney for the plaintiff filed a petition, with the conformity of the defendants, which petition reads as follows:

"Comparece la demandante, por medio de su infrascrita representacion y a este Honorable Juzgado pide respetuosamente el sobreseimiento de esta causa sin perjuicio aai como tambien la cancelacion de la fianza prestada por la aqul demandante para obtcner un mandatniento de aecuestro del automovil descrito en la demands, por haber la demandada, Monica de Gorospc, satiafecho Us men su alidades correspondientes al perfodo comprendido desde el 21 de novicmbre de 1937 hasta el 21 de mayo de 1938, cuya morosidad sv alega en el parrafo IV de la demanda.

"La demandants pide aaimismo que fle condone a log demandadoa al pago de las costas."

The court granted the said petition by writing at the bottom thereof the following:

"Como se pide.

"Mario 29, 1939.

"(Sgd.) GERVASIO DIAZ

"Juez"

On August 28, 1940, the plaintiff instituted the present action against the defendants to recover the sum of P284.70 as principal and P104.76 as interest, or a total of P389.46, on the promissory notes which fell due in the months of March, April, and May, 1938, representing the balance of the purchase price of the said Terraplane automobile. The defendants alleged as special defense that they had already paid each and every instalment due on the chattel mortgage alleged in plaintiff's complaint and that the dismissal of the previous action upon petition of the plaintiff constituted res adjudicata. By way of reply to that special defense, the plaintiff alleged that its motion for dismissal of the previous action was made without prejudice and that the allegation therein regarding payment of instalments up to May 21, 1938, was made through a clerical error.

Upon the trial of the cause the court sustained the defense of res adjudicate, holding that the plaintiff was estopped from claiming nonpayment of the promissory notes in question after admitting payment thereof in its motion for dismissal of the previous action. That ruling was made by the court in resolving defendants' objection to any and

all proof that the plaintiff offered to adduce in support of the allegations of its complaint and reply. As a consequence the court rendered judgment dismissing the case, without costs.

The question raised in this appeal is whether or not the dismissal of the previous action is a bar to the present action.

It appears from both complaints filed in the previous and in the present action that the last of the series of promissory notes given by the defendant Monica de Gorospe for the purchase price of the Terraplane automobile therein mentioned, fell due on May 21, 1938. There was, therefore, a manifest inconsistency between the prayer of dismissal without prejudice and the allegation of payment of all monthly instalments corresponding to the period from November 21, 1937, to May 21, 1938, contained in the petition above quoted. If the defendant Monica de Gorospe had paid all the instalments including that of May 21, 1938, which was the last instalment on the purchase price of the automobile, why did the plaintiff, with the conformity of said defendant, expressly reserve the right to renew the action by asking that the dismissal be made without prejudice? If the defendants had paid up to May 21, 1938, that is to say, all the instalments due on the purchase price of the automobile, why did they agree to the dismissal of the action with costs against them and without prejudice to the bringing of another action? It is manifest that there was an error in said petition which the court as well as the parties apparently failed to notice at that time.

The allegation of payment on the one hand and the reservation of the right to bring another action on the other, were incompatible. One contradicted and annulled the other. Hence both should be disregarded. As a matter of fact neither such allegation nor such reservation was essential to the petition for dismissal since it was filed by the plaintiff before the defendants answered the complaint. The plaintiff had the right to dismiss its complaint without the necessity of alleging any ground nor of making any reservation. The law itself defines the effect of such dismissal, and the parties cannot vary it by any allegation or reservation they may make. Section 127 of the Code of Civil Procedure, which was in force at the time the previous case was dismissed, reads as follows":

"SEC. 127. Dismissal of actions.—An action may be dismissed, with costs to the defendant, in the following cases:

"1. By the plaintiff himself, by written request to the clerk filed among the papers in the case, at any time before trial, upon payment of the costs; provided a counterclaim has not been made, or affirmative relief sought by the cross complaint or answer of the defendant, or provided the judge shall not decide that the defendant has made such preparation for trial that it would be unjust to permit a dismissal without a trial on the merits;

"2. By the court, when the plaintiff fails to appear at the time of trial, and the defendant appears and asks for the dismissal;

"3. By the court, when the plaintiff fails, for an unreasonable length of time to prosecute his action.

"In either of these three cases a dismissal of the action shall not be a bar to another action for the same cause;

"4. The court may also, in its discretion, allow a plaintiff to dismiss the action on payment of the costs after the trial has begun and at any time before final judgment, if the interests of justice so require, and in this case the dismissal shall not be a bar to another action for the same cause. The dismissal shall be entered on the docket of the court and shall be effective, when so entered, to end the action."

Disregarding the superfluous and contradictory allegation as to payment and reservation as to bringing another action, we find that the dismissal of the previous action, which was made with the conformity of the defendants before the latter had filed an answer or made any preparation for trial, properly falls under paragraph 1 of section

127 above quoted, and hence cannot be a bar to the present action. (See also sections 1 and 2, Rule 30 of the new Rules of Court.)

The allegation made by the plaintiff in its petition for the dismissal of the previous action, that the defendants had paid the monthly instalments from November 21, 1937, to May 21, 1938, does not constitute estoppel by conduct against the plaintiff and in favor of the defendants because the latter had knowledge of the true facts and were neither misled by such allegation nor would they be prejudiced by the present action. This action does not contemplate making them pay twice for the same debt. It merely tends to prevent them from taking undue advantage of a supposed mistake of the plaintiff and thereby enriching themselves at its expense.

The judgment appealed from is reversed and the case is ordered remanded to the trial court for further proceedings conformably with this opinion. No finding is made as to costs in this instance. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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