

**BENITO E. DOMINGUEZ, JR., PETITIONER, VS. FILIPINAS
INTEGRATED SERVICES CORPORATION (FISCO), AND THE HON.
COURT OF APPEALS, RESPONDENTS.**

G.R. No. 58820. September 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review the decision of the Court of Appeals in CA-G.R. No. 57661-R which is quoted in full as follows:

"Appeal from the decision of the Court of First Instance of Manila in Civil Case No. 92277, dismissing the plaintiff's complaint on ground of *res judicata*.

"It appears that prior to the institution of the present action, or on March 10, 1973, one Gustavo A. Suarez, doing business under the trade name of 'Davao Arrastre Service', filed in the Court of First Instance of Davao a complaint against defendant Benito E. Dominguez, Jr., docketed as Civil Case No. 7877, for recovery of a sum of money, with prayer for issuance of a writ of preliminary attachment, plus damages.

"The complaint therein substantially averred that on various dates commencing from October 16, 1968 up to November 24, 1972, Suarez granted Dominguez several loans and/or advances totalling P626,600.00, the latter binding himself to pay the same, with 12% interest per annum, upon collection of his claim from the NAWASA in Civil Case No. 8039 of the Court of First Instance of Manila, entitled 'Integrated Services Corporation vs. Engineering Construction, Inc. versus NAWASA'; and that despite payment of the sum of P13,437,084.95 by NAWASA to the Integrated Services Corporation, of which Dominguez was the president, the latter failed and refused to settle his indebtedness to the damage and prejudice of the Davao Arrastre Services (pp. 71-76, Record on Appeal).

"On April 21, 1973, Suarez, plaintiff therein, filed with the Court of First Instance of Davao a notice of dismissal of said Civil Case No. 7877 as follows:

'The defendant not having as yet served plaintiff with an answer of a motion for summary judgment, the plaintiff hereby dismisses with prejudice his complaint against defendant in the above entitled case (Sec. 1, Rule 17 of the Rules of Court)' (pp. 81-82, Record on Appeal).

"Thereafter, defendant Dominguez filed a 'Motion to Dismiss and to Lift Order of Attachment' and, acting thereon, the Court of First Instance of Davao dismissed the case with prejudice. The order of dismissal, dated April 24, 1973, reads as follows:

'Considering the Notice of Dismissal filed by plaintiff in order and well taken, same is granted and the complaint lodged against the defendant in the above entitled case is hereby dismissed with prejudice, without pronouncement as to costs.

'The writ of attachment issued on March 12, 1973 against the properties of the defendant is hereby lifted and set aside' (pp. 83-87, Record on Appeal).

"On May 9, 1973, Attorneys Feliciano C. Tumale and Cesar B. Chavez, attorneys of therein plaintiff Suarez, filed on behalf of the Davao Arrastre and Port Services, Inc. an 'Urgent Omnibus Motion for Substitution of Plaintiff and for Reinstatement of the Complaint and Writ of Preliminary Attachment,' advancing as ground therefor that -

'On February 18, 1969 Gustavo A. Suarez, principal stockholder of the incorporated ' Davao Arrastre and Port Services, Inc.' sold, conveyed and transferred all his stocks in favor of Luis J. Lagdameo, Jr. a copy of which 'Deed of Transfer of Subscription of Stocks' being attached hereto as Annex 'C' and made an integral part hereof.

'That the foregoing being the case, Gustavo A. Suarez lacked the legal capacity to sue when he filed the complaint in this case and he misled the undersigned counsel by concealing the incorporation of the arrastre services;

'That, therefore, Gustavo A. Suarez did not have the legal standing when he filed the notice of dismissal dated April 21, 1973, thus misleading this Honorable Court into dismissing the complaint and discharging the attachment.'

and praying that:

'A . An order be issued granting the substitution of plaintiff from that of Gustavo A. Suarez to Davao Arrastre and Port Services, Inc.;

'B . The order dated April 24, 1973 be lifted and the above entitled case be reinstated;

'C . For such other reliefs which are just and equitable in the premises be granted' (pp. 87-91, Record on Appeal).

"The above motion was denied by the Court of First Instance of Davao in its order dated October 6, 1973 on the ground that 'no substitution could be allowed because there is no pending action to speak of as this case had been dismissed with finality and with prejudice, and that the proper remedy of the movant, if at all, is to file a separate or new complaint' and that 'the dismissal of this case is binding to Gustavo A. Suarez alone, for he is not identical to Davao Arrastre and Port Services Inc.' (pp. 115-119, Record on Appeal).

"On October 18, 1974, the Filipinas Integrated Services Corporation, FISCO for short, a corporation duly organized and existing under Philippine laws, through Attorneys Feliciano Tumale and Cesar Chavez, (the same attorneys of Gustavo A. Suarez in Civil Case No. 7877), instituted the instant action in the Court of First Instance of Manila, docketed as Civil Case No. 92277, for accounting and recovery of a sum of money against its former president and general manager, defendant Benito Dominguez, Jr. the same defendant in Civil Case No. 7877.

"The complaint alleges that Dominguez was the president of plaintiff corporation from October 1965 up to February 1973; that as such president, defendant entered into a management contract, dated August 24, 1965, with Gustavo A. Suarez, whereby plaintiff corporation undertook the management and operation of the arrastre service in the Port of Davao City, which arrastre service was owned and operated by Suarez; that pursuant to said management contract, the resident manager of the arrastre services in the Port of Davao remitted to the defendant, as president of FISCO, the total amount of P626,600.00 through telegraphic transfers; that defendant misappropriated the said amount for his personal use to the damage and prejudice of the plaintiff; that defendant severed his relations with plaintiff corporation sometime in February 1973, without turning over said corporate funds to the plaintiff or to account for the same; and that despite repeated demands, defendant refused and failed to turn over the said amount or to render an accounting thereof. Hence, plaintiff prays that judgment be rendered ordering defendant to pay the aforesaid amount with interest, plus damages.

"In the same complaint, plaintiff sought the issuance of a writ of preliminary attachment, and the same was granted by the court on November 3, 1973.

"In his answer with counterclaim, defendant Dominguez alleges in essence that the management contract adverted to was never consummated; and that the funds received from the Davao Arrastre Services were not corporate funds of plaintiff FISCO, but were remitted by Gustavo A. Suarez and received by defendant in his personal capacity. As affirmative defenses, defendant avers that the management contract is void for lack of approval by the Bureau of Customs; that Gustavo A. Suarez, represented by Attorneys Tumale and Chavez, had filed on March 10, 1973 a complaint in the Court of First Instance of Davao, docketed as Civil Case No. 7877, against defendant for the recovery of the said amount of P626,600.00, which case however was dismissed with prejudice, upon notice of dismissal filed by therein plaintiff Gustavo A. Suarez; that the subject matter of the present case and Civil Case No. 7877 is identical; and that since the instant complaint, which sets forth the same subject matter against the same defendant, had already been litigated and dismissed with prejudice by the Court of First Instance of Davao, the same is barred by *res judicata*, estoppel and laches. Defendant further pleads a counterclaim for recovery of actual, moral and exemplary damages, plus attorney's fees and expenses of litigation (pp. 131-139, Record on Appeal).

"At the trial, plaintiff corporation presented the testimony of its new incumbent president and general manager, Jose C. Domingo, Jr., who testified that on August 24, 1969, defendant Benito E. Dominguez, Jr. as then president and general manager of plaintiff corporation, entered into a management contract (Exhibit A) with one Gustavo A. Suarez, owner and manager of the Davao Arrastre Services, whereby plaintiff undertook the management and operation of the arrastre services in the Port of Davao City; that pursuant to this management contract, Martin David, the plaintiff's resident manager in the Port of Davao City during the period from 1968 to 1973, remitted to the defendant, as president of FISCO, the total amount of P626,600.00 through telegraphic transfers (Exhibits B to TTTT, inclusive); that these remittances were neither accounted for by the defendant nor turned over by him to the plaintiff corporation, but were deposited in his personal account; that defendant severed his relationship with plaintiff corporation sometime in February 1973 without rendering an accounting of said corporate funds; that on September 4, 1973, plaintiff wrote defendant a letter (Exhibits UUUU) demanding that the latter 'render a financial accounting and inventory of any and all monies, goods and all other properties of the corporation under his responsibility as president of the corporation prior to the reorganization on March 5, 1973'; and that despite receipt of said letter, defendant failed to render an accounting or to turn over the said corporate funds to the plaintiff (tsn, March 28, 1974).

"For his part, defendant Dominguez admitted that he was the former president and general manager of the plaintiff corporation and that he severed his relationship with said corporation sometime in February 1973 without obtaining any clearance from the plaintiff. He further admitted that he had received the cash remittances covered by Exhibits B to TTTT, inclusive, in the total amount of P626,600.00 which he deposited in his personal account with the Prudential Bank and that said funds were not reflected in the books of account of the plaintiff corporation. He claims however that the amounts in question were obtained by him in his personal capacity as loans from Gustavo A. Suarez and that in one way or another, he had already settled said obligation with Suarez, although he has no receipts, books or ledger to support the claim that he had returned or paid the amount involved to Suarez (tsn, January 9 and 31, 1975).

"On March 11, 1975, the lower court rendered a decision dismissing the plaintiff's complaint in this wise:

'IN VIEW OF ALL THE FOREGOING, the court renders judgment, sustaining defendant's special defense in the form of motion to dismiss, without pronouncement as to costs, damages and attorney's fees.'

"The trial court rationalized the dismissal of the complaint as follows:

"The Court sustains the contention of the defendant and rules that *res judicata* is present in this case. And, therefore, having been dismissed with finality and with prejudice in Davao, the case cannot be revived by circumventing the Davao decision and substituting another party-plaintiff over the same cause of action against the same defendant and for the same amount. To countenance this complaint and give it due course will be to subject the defendant to endless harassment because as several plaintiffs have already lost the case, another

party-plaintiff could again be substituted and there will be no end to this litigation.' (p. 188, Record on Appeal).

"The motion for reconsideration of the above decision having been denied for lack of merit, plaintiff FISCO interposed the present appeal contending that 'the trial court erred in applying the principle of res judicata in this case.'

"We find the appeal meritorious. The dismissal with prejudice of Civil Case No. 7877 by the Court of First Instance of Davao did not in any way affect the right of action of the present plaintiff against Dominguez. Such dismissal, decreed on motion of Suarez, the plaintiff therein, constitutes at best a waiver of Suarez' cause of action. By his voluntary renunciation of the suit, Suarez forever lost his action against Dominguez. But the dismissal with prejudice is personal to him alone and may not be invoked in abatement of the right of action of the present plaintiff against the same defendant.

"While it is true that Civil Case No. 7877 and the present case involve the same amount of P626 ,600.00, nevertheless there is no identity of parties. The party-plaintiff in Civil Case No. 7877 is Gustavo A. Suarez, while the plaintiff in the present case is FISCO, an entity entirely distinct and separate from Gustavo A. Suarez. FISCO was not a party in Civil Case No. 7877; neither is it a successor-in-interest of Gustavo A. Suarez. Not having been a party in the former case, the order of dismissal with prejudice entered therein does not constitute a bar to the present case.

"Neither is there identity of causes of action. The cause of action of the plaintiff Suarez in Civil Case No. 7877 arose from an alleged loan he had extended to defendant Dominguez, while FISCO's complaint stems from the failure of Dominguez, as former president and general manager of FISCO, to account for and turn over the amount of P626 ,600.00 which he had received for and in behalf of the plaintiff corporation.

"In fine, the dismissal of the present action by the trial court on ground of res judicata was improper and erroneous.

"Since the defendant Dominguez has relied exclusively on the defense of res judicata and has submitted the case for decision solely on that issue, he is deemed to have admitted all the material allegations of the complaint (Machinery and Engineering Supplies, Inc. vs. Quintano, 98 Phil. 892). Upon this premise, judgment must be rendered in favor of plaintiff-appellant FISCO for the amount claimed in its complaint, plus interest.

"ACCORDINGLY, the decision appealed from is reversed, and defendant- appellee Benito E. Dominguez, Jr. is hereby ordered to render an accounting or turn over to the plaintiff-appellant FISCO the sum of P626 ,600.00, with interest from the filing of the complaint. Costs against defendant appellee Benito E. Dominguez, Jr."

The petitioner prays that the decision of the Court of Appeals be reversed and that, instead, the trial court's order of dismissal be affirmed. "In the alternative, petitioner prays that the case be remanded to the trial court for trial on the merits, since all that was had was merely a preliminary hearing on the affirmative defense of res judicata."

The petition is impressed with merit.

We agree with the Court of Appeals, for the reasons stated in its decision, that the dismissal of Civil Case No. 92277 by the Court of First Instance of Manila on ground of res judicata was improper and erroneous.

However, We cannot agree with its statement that:

"Since the defendant Dominguez has relied exclusively on the defense of res judicata and has submitted the case for decision solely on that issue, he is deemed to have admitted all the material allegations of the complaint (Machinery and Engineering Supplies, Inc. vs. Quintano, 98 Phil. 892). Upon this premise, judgment must be rendered in favor of plaintiff-appellant FISCO for the amount claimed in its complaint, plus

interest."

The relevant statement in the Quintano case cited by the Court of Appeals is found on page 897 and reads as follows:

"For the above reasons, we hold that the dismissal of the present action by the trial court on the ground of res judicata was improper and erroneous. As defendant relied solely on the defense of res judicata and submitted the case for decision on that issue, he is deemed to have admitted all the material allegations of the complaint. Consequently, judgment may be rendered, as it is hereby rendered, in favor of plaintiff-appellant for all amounts claimed in its complaint, i.e., P3 ,733.53 under its first cause of action, and P2,000 under its second cause of action, plus interest."

It can thus be seen that for a defendant to be deemed to have admitted all the material allegations of the complaint so that judgment can be rendered accordingly, the following must both take place, namely: (a) he must have relied solely on the defense of res judicata; and (b) he must have submitted the case for decision on that issue.

The two conditions are not present in the instant case. For the fact of the matter is that the petitioner (defendant in the trial court) did not rely solely on the defense of res judicata and he did not submit the case for decision on that issue.

We take note that in both his original Answer with Compulsory Counterclaim (Record on Appeal, pp. 131-139) and his Supplemental Answer with Compulsory Counterclaim (Record on Appeal, pp. 164-172), res judicata was interposed as an affirmative and special defense but it was not the only defense. Moreover, the case was not submitted for decision on that issue alone. Thus in his Manifestation and Motion dated October 22, 1974, the petitioner (defendant) said:

"1 . Pursuant to agreement of the parties through counsel and permission of this Honorable Court on October 17, 1974, defendant is hereby filing his 'Supplemental Answer' incorporating under par. 7 thereof the new development in the Court of First Instance of Davao in Civil Case No. 8387 wherein the same 'Agreement' relied upon herein by the same plaintiff in both cases was found invalid as it 'does not bear the written consent of the Bureau of Customs and the Department of Finance.'

"2. That, accordingly, defendant hereby moves that a preliminary hearing on the special and/or affirmative defense of bar by final judgment be held in this case, to determine the propriety of dismissing the complaint at this stage without further trial as allowed under the Rules of Court.

"PRAYER

"WHEREFORE, defendant prays that the attached Supplemental Answer be admitted and that a preliminary hearing on the special/affirmative defense of bar by final judgment be held in this case on November 5, 1974 at 8:30 A.M." (Record on Appeal, p. 161, Underscoring supplied.)

And the dispositive portion of the decision of the trial court dismissing the complaint reads:

"IN VIEW THEREOF OF THE FOREGOING, the Court renders judgment, sustaining defendant's special defense in the form of motion to dismiss, without pronouncement as to costs, damages and attorney's fees." (Record on Appeal, p. 188, Underscoring supplied.)

It is manifest that the Quintano doctrine is inapplicable in the instant case because the two conditions required by the doctrine are absent.

WHEREFORE, the decision of the Court of Appeals is hereby modified in that the Court of First Instance of Manila shall try Civil Case No. 92277 on the merits and render a decision accordingly. No special pronouncement

as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, and De Castro, JJ., concur.
Escolin, J., no part.

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