

TRINIDAD S. ESTONINA, PETITIONER, VS. SOUTHERN MARKETING CORPORATION NOW SOUTHERN INDUSTRIAL PROJECTS, INC., AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 61375. November 23, 1988

Ponente: CORTES, J.

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CORTES, J.:

The instant case involves the execution of a final judgment by independent action under Sec. 6, Rule 39 of the Revised Rules of Court.

The antecedent facts are as follows:

In a complaint dated November 26, 1976 filed in the Court of First Instance of Manila and docketed as Civil Case No. 105782, Trinidad S. Estonina, the petitioner herein, alleged: (1) that on December 9, 1968, in a case entitled "Southern Marketing Corporation vs. Trinidad S. Estonina", Civil Case No. 56349, Court of First Instance of Manila, judgment was rendered in her favor and against Southern Marketing Corporation (hereinafter referred to as "SMC"), dismissing the latter's complaint and, on her counterclaim, ordering Southern Marketing Corporation to refund her the amount of P198,152.50 representing over-payments she had made to SMC, plus P1,000.00 as attorney's fees and costs; (2) that said judgment was not executed in view of the failure to locate any asset of SMC; (3) that during the pendency of Civil Case No. 56349, SMC merged with Southern Industrial Project, Inc. (hereinafter referred to as "SIP"), and pursuant to the Merger Agreement SIP assumed all the liabilities of SMC, together with all the latter's obligations and undertakings, contracted or otherwise, express or implied, actual or contingent; and (4) that execution of said judgment by ordinary action is not barred by Statute of Limitations.

SIP moved to dismiss the complaint for failure to state a cause of action and prescription. An opposition to the motion to dismiss was filed by petitioner, to which SIP filed a reply. In an order dated March 1, 1977, the trial court deferred resolution on the motion to dismiss as the grounds therefor did not appear to be indubitable. Thus, SIP filed its answer specifically denying the material allegations of the complaint and alleging that the subject matter of the complaint and the counterclaim in Civil Case No. 53649 were not included in nor within the purview of the Merger Agreement; that SIP was not a judgment debtor in the judgment sought to be reviewed nor was defendant-appellant a judgment debtor in the judgment sought to be enforced nor was it substituted or impleaded in Civil Case No. 53649; that the complaint stated no cause of action; and that if ever petitioner had a cause of action it had already prescribed.

During the pre-trial, the parties marked their documentary evidence and made the following stipulations:

- That under date of August 23, 1962, the Southern Marketing Corporation and herein defendant Southern Industrial Projects, Inc. executed a Merger Agreement, which is Annex "A" of the Complaint. The same was notarized on February 7, 1963 and was filed June 5, 1963.
- That pursuant to the Merger Agreement, the stockholders of the Southern Marketing Corporation amended

Article IV of the Articles of Incorporation on September 29, 1962 by shortening the term of its existence to March 16, 1963, thereby dissolving the corporation as of said date, but the amendment was filed with the Securities and Exchange Commission only on April 2, 1964, as per certification of the SEC.

- That Southern Marketing Corporation filed a complaint dated March 30, 1963 with the Court of First Instance of Manila (Branch XVI), docketed as Civil Case No. 53649 for recovery of sums of money against Trinidad S. Estonina.
- That on May 3, 1963, Trinidad S. Estonina filed her Answer with Counterclaim in said Civil Case No. 53649.
- That on February 17, 1968, Trinidad S. Estonina filed an Amended Answer with Counterclaim in said Civil Case No. 53649 wherein she claimed an overpayment of P198,152.30, which is the subject matter of the judgment sought to be revived.
- That the assets transferred to herein defendant and the liabilities it assumed from Southern Marketing Corporation are those embodied in the Balance Sheet as of September 30, 1962, which is attached as Annex "A" of the Merger Agreement, and together with the terms and conditions included in the Merger Agreement. [CFI Decision in Civil Case No. 105782, pp. 3-4; Rollo, pp. 78-79.]

They also limited the issues to the following:

- Whether or not the present action for revival of judgment can be validly enforced against defendant Southern Industrial Projects, Inc., which was not a party to the judgment sought to be revived; and
- Whether or not the counterclaim awarded to the said Trinidad S. Estonina in said Civil Case No. 53649 in the judgment dated December 9, 1968 falls within the purview of the Merger Agreement within the contemplation of the parties to the said Merger Agreement. [Ibid.]

Both parties filed separate motions for summary judgment, which the trial court granted after finding that there was no genuine issue as to any material fact.

In a decision dated September 28, 1979, the Court of First Instance, after finding that the subject matter of the judgment sought to be enforced fell within the Merger Agreement, ordered private respondent to pay petitioner the total sum of P199,152.50, with interest at 12% per annum from the date of the filing of the complaint in the second case, until fully paid.

Disputing its liability, SIP appealed to the Court of Appeals. The appellate court, after reviewing the final and executory judgment sought to be enforced, concluded that SMC, much more SIP, could not be held liable on petitioner's counterclaim in Civil Case No. 53649, reversed the decision of the Court of First Instance and dismissed petitioner's complaint. As petitioner's motion for reconsideration was dismissed, recourses was sought in this Court.

In seeking to have the Court annul and set aside the decision of the Court of Appeals and its resolutions denying the motion for reconsideration, petitioner attributes to the respondent court grave abuse of discretion amounting to lack or excess of jurisdiction for having gone beyond the issues and reviewing the judgment sought to be enforced.

There is merit in this contention.

The established rule in this jurisdiction is that a judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by independent action. This has been the rule, save for a minor amendment, even under the Code of Civil Procedure and the old Rules of Court. Such rule may

now be found in Rule 39 of the the Revised Rules of Court which states:

Sec. 6. Execution by motion or by independent action. -- A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

Under Article 1144 (3) of the Civil Code, the action to revive prescribes in ten (10) years counted from the date said judgment became final or from the date of its entry [Vda. de Decena v. De los Angeles, G.R. No. L-29317, May 29, 1971, 39 SCRA 94; Marc Donnelly v. Court of First Instance of Manila, G. R. No. L-31209, April 11, 1972, 44 SCRA 381.] Thus, after the lapse of five (5) years from the date of entry of judgment or the date said judgment became final and executory, and before the expiration of ten (10) years from such date, the judgment may be enforced by instituting an ordinary action alleging said judgment as the cause of action [Gutierrez Hermanos v. De la Riva, 46 Phil. 827 (1923); Philippine National Bank v. Deloso, G.R. No. L-28301, March 30, 1970, 32 SCRA 266.]

In the instant case, it is not disputed that the complaint in Civil Case No. 105782, for the enforcement of the judgment in Civil Case No. 53649, was filed within ten (10) years from the date said judgment became final and executory, the only issue being whether or not said judgment may be enforced against SIP.

However, in resolving SIP's appeal from the decision of the trial court in Civil Case No. 105782, the Court of Appeals reviewed the merits of the decision of the trial court in Civil Case No. 53649 and concluded that SMC was not liable on the counterclaim. Consequently, it said, the judgment against SMC could not be enforced against SIP.

But the Court of Appeals could no longer review said judgment as such had already become final and executory. The rule is well-settled that the judgment sought to be enforced may no longer be reviewed in the new action for its enforcement, an action the purpose of which is not to re-examine and re-try the issues already decided but to revive the judgment [Azotes v. Blanco, 85 Phil. 90 (1949); Vda. de Decena v. De los Angeles, *supra*.] As explained by the Court in the early case of *Compania General de Tabacos v. Martinez* [29 Phil. 515 (1915)]:

After the lapse of five years, however, the judgment creditor can no longer enforce the judgment by process issuing as his request from the court which rendered it. It is then beyond the power of that court to issue execution upon its judgment. The judgment is, after that period of time, reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all other ordinary actions, by the institution of a complaint in the regular form. Being a final judgment of a court, it is of course, conclusive as to the controversy between the parties up to the time of its rendition. By the mere pleading of the judgment and its introduction in evidence, the plaintiff effectually blocks all investigation into the merits of the original controversy. But, being a mere right of action, it is subject to defenses and counterclaims which may have arisen subsequent to the date it became effective, as, for instance, prescription, which bars an action upon a judgment after ten years (sec. 43, par. 1, Code Civ. Proc.) or payment; or counterclaims arising out of transactions not connected with the former controversy. In other words, the judgment creditor finds himself in the position of any other litigant and is under an equal necessity of proving his case, although his trouble in doing so may be less due to the conclusiveness of the evidence which he has to offer, that is, his judgment. . . . [at pp. 520-521; Underscoring supplied.]

Clearly, therefore, the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reviewed the final decision of the Court of First Instance in Civil Case No. 56349. That, as perceived by the appellate court, errors of law were committed by the trial court in rendering said judgment, does not detract from the fact that such had already become final and may no longer be reviewed.

In view of the foregoing, the only issue that need be resolved is whether or not SIP may, under the Merger

Agreement, be held liable for petitioner's claim against SMC pursuant to the judgment in Civil Case No. 53649.

The Merger Agreement, entered into by and between SMC and SIP on August 23, 1962, provides:

- Southern Marketing Corporation deed, transfer, grant and/or assign any and all of its business, property, assets and goodwill which shall include, but shall not be limited to, all of its real property and its improvements, fixed assets, machinery personal property, stock in hand, contractual rights, claims, whether extrajudicial or judicial, leases, bank deposits, stocks, bonds and other securities, accounts receivable, supplies, equipment, inventory, all and any of its holdings, and in short, the totality of all its assets reflected in the Balance Sheet of Southern Marketing Corporation as of September 30, 1962 respectively. . . . It is further understood, covenanted, and agreed that whatever assets which are not normally reflected in the Balance Sheet of the corporation concerted or of whatever assets might have been omitted from said Balance Sheet through oversight, as well as all other assets which may have been acquired until the effective date of this merger agreement shall be deemed included in their conveyance, assignment and transfer.
- Southern Industrial Projects, Inc. hereby assumes all the liabilities of Southern Marketing Corporations as are reflected in the Balance Sheet . . . together with all the obligations and undertakings of Southern Marketing Corporation, contracted or otherwise, express or implied, actual or contingent, subject, however to being able to exercise all of the defenses, rights, privileges, setoffs and counterclaims of every kind and nature which Southern Marketing Corporation might have. [Rollo, pp. 20-21; Italics supplied.]

The agreement also provided that the totality of the assets and liabilities of SMC shall be deemed vested in and incurred by SIP. The agreement provided that it shall become effective upon its approval by the Securities and Exchange Commission. It does not appear from the record when the merger was actually approved, although the agreement was filed with the SEC on June 5, 1963. However, SMC's articles of incorporation were amended to shorten its corporate existence to March 16, 1963, but the amendment was approved by the SEC only on April 2, 1964 [Rollo, pp. 23, 78-79.]

With regard to Civil Case No. 53649, it appears from the record that the complaint filed by SMC was dated March 30, 1963. Thus, irrespective of the actual date when the merger actually became effective, considering that under Sec. 77 of the Corporation Law a corporation whose corporate existence had been terminated shall nevertheless continue as a body corporate for three (3) years to enable it to prosecute and defend suits, clearly, SMC still had the personality to file the complaint on March 30, 1963.

That SMC filed the complaint after its corporate term was supposed to have expired on March 16, 1963, does not necessarily imply that SMC's claim was not covered by the Merger Agreement, contrary to the appellate court's view. Pursuant to the very provisions of the agreement, it would appear that the claim of SMC against the petitioner was an asset that was transferred to SIP, even if, as found by the Court of Appeals, it was not included in the Balance Sheet, as section 1 of the agreement expressly provides that all assets acquired until the effective date of the merger shall be deemed included in the transfer [Rollo, p. 20.] Considering that the merger was to take effect upon its approval by the SEC; that the Merger Agreement was filed with the SEC only on June 5, 1963; and that the amendment of SMC's articles of incorporation to shorten its term was approved only on April 2, 1964, it may safely be assumed that when SMC's complaint against petitioner was filed on March 30, 1963, the merger had not yet become effective. Consequently, SMC's claim against petitioner was an asset that was acquired by SMC before the effective date of the merger and, hence, was transferred to SIP pursuant to the Merger Agreement.

In the same vein, being an offshoot of SMC's claim against petitioner, the counterclaim was a "contingent" liability that SIP assumed pursuant to section 2 of the agreement [Rollo, p. 21.]

In ruling that the judgment against SMC could not be enforced against SIP, the Court of Appeals concluded that

SIP was "not a successor-in-interest with respect to the subject matter of Civil Case No. 53649" [Rollo, p. 107.] Pursuing this point, SIP contends that it is not a "successor in interest by title subsequent to the commencement of the action" as contemplated in Rule 39, Sec. 49 of the Revised Rules of Court, which reads:

Effect of Judgments. -- The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

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(b) In other cases where the judgment or 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.

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It must be emphasized, however, that the facts point to a contrary conclusion. The Merger Agreement, by virtue of which SIP acquired SMC'S assets and assumed its obligations, took effect after SMC filed its complaint against petitioner. Thus, by virtue of its express contractual undertaking to assume SMC's contingent liabilities, SIP became SMC's "successor in interest by title subsequent to the commencement of the action" within the purview of Rule 39, Sec. 49(b) and, hence, was bound by the judgment against SMC in Civil Case No. 53649.

In view of the foregoing, there is no doubt that the judgment in Civil Case No. 53649 could be enforced against SIP. The Court of Appeals, in ruling otherwise, gravely abused its discretion amounting to lack or excess of jurisdiction.

WHEREFORE, finding that the Court of Appeals had gravely abused its discretion tantamount to lack or excess of jurisdiction, the decision in CA-G.R. No. 66636-R is ANNULLED and SET ASIDE. The decision of the Court of First Instance in Civil Case No. 105782 dated September 28, 1979 is REINSTATED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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