

**THE SHELL COMPANY OF THE PHILIPPINES, LTD., PETITIONER, VS.
HON. PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF
AGUSAN DEL NORTE AND BUTUAN CITY, BRANCH II, SHERIFF OF
MANILA AN...**

G.R. No. 64149. June 19, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

The instant petition prays for the issuance of the extraordinary writs of -

(a) certiorari directed against respondent court,[1] for having allegedly acted without or in excess of its jurisdiction in issuing on July 17, 1981 a writ of execution in Civil Case No. 939 awarding in favor of herein private respondent Sastre the amount, among other sums, of P624,042.23,[2] a substantial portion of which was the supposed overpayment by said private respondent to petitioner Shell;

(b) prohibition and mandamus to enjoin respondent sheriff or any of his deputies from further proceeding with the implementation of the aforementioned writ of execution and to require them to accept the tender of payment offered by petitioner in the amount of P92,607.93 in satisfaction of the judgment rendered by respondent court in said civil case.

The records show that way back on July 31, 1963 an amended complaint, entitled "Go See Gawa and Eustaquia Sastre vs. The Shell Company of the Philippines Limited," was filed with respondent court and docketed therein as Civil Case No. 939 for collection of private respondent. Sastre's alleged commission from the sale of petitioner's products and commodities in Butuan City and in the province of Agusan del Norte.[3]

On June 2, 1969, respondent court[4] rendered a decision in favor of private respondent, with the following decretal portion:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment:

1. ORDERING defendant SHELL to reimburse plaintiff Eustaquia Sastre the sum of SIX HUNDRED TWENTY FOUR THOUSAND FORTY TWO PESOS and TWENTY THREE CENTAVOS (P624,042.23), with legal rate of interest from the filing of this case up to the final payment of the same;
2. ORDERING defendant SHELL to pay plaintiff EUSTAQUIA SASTRE the sum of FIFTY THOUSAND (P50,000.00) PESOS for actual and moral damages suffered by the latter, with legal rate of interest from the time of the filing of this case up to its final payment;
3. ORDERING defendant SHELL to pay plaintiff Eustaquia Sastre the sum of FIFTY THOUSAND (P50,000.00) PESOS as exemplary damages to serve as a deterrent for defendant SHELL not to juggle with its figures next time to serve unjustly its purpose at the expense of others, with legal rate of interest from the filing of this case up to its final payment;

4. ORDERING defendant SHELL to pay plaintiff Eustaquia Sastre the sum of TEN THOUSAND (P10,000.00) PESOS as attorney's fees for forcing her to file this case in Court with aid of counsel just to collect what is due her from defendant SHELL;

5. ORDERING defendant SHELL to reimburse plaintiffs the sum of EIGHTY TWO THOUSAND SEVEN HUNDRED EIGHTY-FIVE PESOS and NINETY SEVEN CENTAVOS (P82,785.97) plus interest thereon and attorney's fees adjudged by the Court of First Instance of Cebu against plaintiffs herein in Civil Case No. R--7666, PROVIDED that said judgment shall not have been already paid by and/or executed against said plaintiffs; and

6. TAXING defendant SHELL the costs of this suit.

SO ORDERED."[5]

From the aforesaid decision petitioner went on appeal to the Court of Appeals questioning, inter alia, the award of P624,042.23 representing the supposed overpayment by private respondent to petitioner. In its decision in CA-G.R. No. 50233-R[6] dated July 14, 1980, the Court of Appeals affirmed the judgment of the trial court with the modification that the awards for moral and exemplary damages were reduced to P25,000.00 each and the attorney's fees to P5,000.00.

The award of P624,042.23 was justified by respondent Court of Appeals as follows:

"The pivotal issue posed for our determination is whether the lower court erred in finding that appellant SHELL is indebted to plaintiffs in the sum of P624,024.23 (sic, P624,042.23), with legal interests from the filing of the complaint.

"In this connection, we propose to discuss first appellant's third, fourth and fifth assigned errors which we cannot sustain for lack of merit. The trial court found that SHELL is indebted to plaintiffs in the following amount:

'x x x plaintiff Eustaquia Sastre has paid SHELL thru Exhs. K, K-1 to K-101, inclusive, the sum of P642,028.20. And (sic) to this amount her uncollected commission or discount of P64,800.00 from defendant SHELL will give us a total of P706,828.20. Deduct the acknowledged debt of plaintiffs in the sum of P82,785.97, which the Court hereby holds as true, will leave us the amount of P624,024.23 (sic. P624,042.23) in plaintiff Eustaquia Sastre's favor." (p. 28, Record of Appeal)

"SHELL assails the above findings as erroneous because:

(1) Exhs. K, K-1 to K-101, with the total sum of P642,028.20, were offered by plaintiffs in evidence to show that they have no more indebtedness to SHELL;

(2) The Court a quo should have given credence to the Statement of Account (Exh. 15) prepared by its witness, Mr. Maximo Villarin, Credit Control Head of SHELL, showing a total of 22,047 drums of gasoline sold by Sastre for the period from 1955 to 1962, instead of believing the testimony of Mr. Jose Tan, SHELL's sales representative, who testified from memory that Sastre sold 64,800 drums of gasoline from 1954 to 1962; and,

(3) The trial court should not have ordered SHELL to reimburse plaintiffs the amount of P82,785.97, which was awarded to it in the CFI of Cebu because, in effect, that would amount to a review of a final Decision of a co-equal Court.

"In our desire to ascertain whether the assigned errors were committed by the lower court, which had the advantageous point of assessing the documentary and testimonial evidence upon their presentation, we carefully reviewed the evidence and we find no compelling reason to disturb His Honor's findings that:

'Now, the question is asked: Did Plaintiff Eustaquia Sastre issue really Exhibits K to K-101, inclusive? And if so, to whom? Were they negotiated and/or cashed by the endorsee thereon?

The answers to all the three foregoing questions are best supplied by PNB Cashier Florentino Valenzuela who admitted during the trial that said checks covered by Exhibits K to K-101, inclusive, were

'x x x issued by Mrs. Sastre in favor of the Shell Company of the Philippines, Ltd., and these checks were negotiated with our PNB Cebu Branch and the endorsement is endorsed by the Shell Company of the Philippines and the endorsements are duly guaranteed by the PNB Cebu Branch.' (tsn, p. 352, Florentino Valenzuela)

The foregoing is also corroborated by no less than Atty. Nicholas Deen, counsel for defendant SHELL who admitted in open Court during the hearing that

'x x x we admit that the signatures of Eustaquia Sastre are appearing there.'

and that

'x x x this witness (Eustaquia Sastre) has already sufficiently established that the checks have been paid to the Shell Co. thru the PNB, so that there will be no need to identify these checks x x x.' (tsn, p. 272, Atty. Nicholas Deen)

x x x x x

'As to how many drums of gasoline and diesoline Eustagua Sastre has sold from 1954 to 1962 inclusive, we have it from Jose Tan, defendant SHELL'S Sales Supervisor then, that Plaintiff Eustaquia Sastre sold on the average 300 drums of gasoline a month. For nine years, therefor, (sic) said plaintiff sold 32,400 drums of gasoline and 32,400 drums of diesoline, or a grand total of 64,800 drums. At the agreed discount or commission of one (P1.00) pesos (sic) per dum (sic), plaintiff Eustaquia Sastre is entitled to receive P64,800 (See: tsn, p. 402, Jose Tan).' (pp. 26-28, Record on Appeal).

"In justifying the award granted, His Honor rationalized in this wise:

'The Court is aware that a party can no more succeed upon a case proved but not alleged than upon a case alleged but not proved.' (Obispo Catolico Romano de Zamboanga vs. Reyes, TA-R.A. Num. 20321-R, Enero 18, 1964, citing Ramirez vs. Orientalist Co., and Fernandez, 38 Phil. 647).

'But it is equally aware that this Court is not only a Court of law, but also a Court of equity. For here we have defendant SHELL, through its counsel, admitting a blatant, complete and crassly obvious overpayment, as aforesaid, that need not be proved anymore by plaintiff Eustaquia Sastre. For the Court to just close its eyes to it would make it a party to such a manifest injustice, where, as in the instant case, the records do not disclose that such admission by defendant SHELL'S counsel as above-said was previously shown during the trial as to have been made through palpable mistake (Section 2, Rule 129, Revised Rules of Court). And under the principle of NEMO CUM ALTERIUS DETRIMENTO POTEST '(Art. 22, New Civil Code; see also: Escudero vs. Flores, 51 O.G. 3444), it is but fair, just and equitable that defendant SHELL shall never for a moment be allowed to unjustly enrich itself at the expense of plaintiffs.' (pp. 28-29, Record on Appeal)

"Plaintiffs point out that if the contention of appellant that Eustaquia Sastre has not overpaid SHELL is correct, why did it refuse the motion of plaintiffs to produce the original records of SHELL in court? If appellant had nothing to hide, why its unjustified refusal to produce documents the existence of which is not denied? The reason that the documents are in Cebu City is flimsy and elusive of the truth.

"We agree with the trial court which found out that in addition to the 'commission', to which appellee is entitled, the records yield the finding that in actuality, appellee has made an overpayment to SHELL. We agree

with the trial court that in the face of such a finding, the court cannot close its eyes nor fold its arms, and tolerate such injustice over and above the procedural technicality in substantial justice, especially because the lower court is a court of law and equity.

"The payment made by plaintiff Sastre in favor of SHELL were evidenced by checks (Exh. K, K-1 to K-101) and these were cashed by appellant. These payments are admitted. That plaintiffs have paid in full their obligation to SHELL, pursuant to their Sales Agreement of 1955, was shown by appellant's own witness, Mr. Jose Tan, who testified that Sastre pays her obligation to SHELL monthly by check; that in case she requests for credit in excess of the 'Indemnity Agreement' or 'Cash Pledge Agreement', the same should be made in writing by her to the SHELL management; and that he is not aware of any written request made by Sastre to SHELL that she be given an extension beyond the 15-day period, from the delivery of the sales invoices, within which to pay her obligation to SHELL. From the foregoing, the lower court reached the conclusion, to which we agree, in the absence of a plausible explanation from appellant, that plaintiff Sastre indeed made overpayments to SHELL as shown by the above-mentioned checks.

"In disregarding SHELL's documentary evidence, the trial court was guided by the following:

- (1) The documents were not original copies and the originals were not produced in court for comparison in spite of plaintiff's request; and,
- (2) The Statement of Account (Exh. 15) was prepared by Mr. Maximo Villarin, without the intervention of plaintiffs and, therefore, self-serving."^[7]

From the decision of the Court of Appeals, petitioner filed a petition for review on certiorari with this Court, docketed as G.R. No. 56343, but not before filing a motion for extension of time to file said petition within forty (40) days.^[8] In our resolution dated April 1, 1981, we granted the motion but only for thirty (30) days.^[9]

On April 21, 1981, petitioner filed a second motion for extension praying that it be given another fifteen (15) days within which to file the aforementioned petition.^[10] We denied said motion, for having been filed late, in our resolution dated May 18, 1981, as the first extension was granted only for thirty (30) days.^[11] In the meanwhile, a third motion for extension of ten (10) days was filed by petitioner on May 4, 1981.^[12]

On May 11, 1981, petitioner finally filed its petition for review on certiorari which was erroneously entitled as a petition for certiorari.^[13] On even date, petitioner filed a manifestation praying that our resolution of April 1, 1981 be reconsidered, that its motions for extension be granted and that its petition be given due course.^[14] Further, on June 4, 1981, petitioner filed an urgent motion for reconsideration of our resolution dated May 18, 1981 and for the admission of its aforesaid petition.^[15]

On July 6, 1981, the Court issued the following resolution:

"x x x Acting on the third-last motion for extension for (10) days filed by petitioner within which to file the petition for review, the Court Resolved to DENY the same, it being a matter of policy of the Court not to grant more than thirty days extension for the filing of petition for review. (In this case, petitioner would have a total of 65 days) The Court took no action on the petition for review, except to note that the main issue raised in the petition is factual, and as to the questions of (1) whether or not the claim of overpayment by respondents is barred under the rule on compulsory counterclaims and (2) whether or not the said claim was properly granted by the trial court on the basis of the evidence strictly limiting the same to the amount alleged in the pleadings as another cause of action, the Court is not inclined to disturb the rulings of the Court of Appeals thereon, the error assigned being technical. Correspondingly, the motion of petitioners for the reconsideration of the Court's resolution of May 18, 1981 is DENIED, and the Court of Appeals may proceed to enter final judgment in CA-G.R. No. 50233-R."^[16]

On July 22, 1981, petitioner filed a motion for reconsideration of the above-quoted resolution.^[17] Thereafter, or

on July 24, 1981, petitioner filed another motion for the issuance by this Court of a temporary restraining order (TRO) to restrain respondent sheriff from enforcing the writ of execution issued by the trial court in the original case.[18] Petitioner also filed an urgent ex parte motion to resolve said motion on July 31, 1981.[19]

Acting on the motion for the issuance of a TRO, we resolved on August 10, 1981 to suspend all proceedings and processes in or issued by the trial court in Civil Case No. 939, until further orders by this Court.[20]

Thereafter, or on December 16, 1981, we issued another extended resolution which reads:

"x x x Acting on petitioner's motion for reconsideration dated July 22, 1981 of this Court's resolution of July 6, 1981 denying its motion for a third extension of time to file a petition for review of the decision of the Court of Appeals in CA-G.R. No. 50233-R, Go See Gawa, et al. vs. The Shell Company of the Philippines, LTD., the opposition thereto of private respondents dated August 7, 1981 and the reply of petitioner of August 14, 1981, the Court Resolved, after mature deliberation on and consideration of all the pleadings filed by the parties in this case, to DENY, as it hereby DENIES, petitioner's subject motion for reconsideration. Apart from the tardiness already referred to in Our resolution of July 6, 1981, which in itself is as a rule compelling, the Court, while very much impressed with the industry and scholarly discussion of their contentions in their pleadings and motions, (1) is not sufficiently convinced that the claim of private respondents in Civil Case No. 939 should have been a compulsory counterclaim to petitioner's complaint in Civil Case No. R-7666 of the Court of First Instance of Cebu, the required identities as to the causes of action in the two cases not being indisputable and (2) does not deem it beyond the purview of Section 5 of Rule 10 of the Revised Rules of Court for the trial court in Civil Case No. 939 to pass on the matter of overpayment claimed by private respondent, the contention that Exhibits K, K-1 to K-101 were presented merely to prove that private respondents have already paid petitioner P82,785.97, since it appears unusual if not ridiculous to present such number of exhibits purportedly involving P600,000 only to prove the payment of a comparatively much smaller amount, and the trial court as well as the Court of Appeals were in the best position to determine the purpose of such evidence and the admission of trial counsel for petitioner in regard thereto, and apply accordingly the rule that issues 'tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings' so much so that even if corresponding amendment of the pleadings to conform with the evidence is desirable, 'failure to so amend does not affect the result of the trial of these issues.' (Section 5, Rule 10)"[21]

On December 28, 1981, petitioner filed a second motion for reconsideration of our resolutions dated July 6, 1981 and December 16, 1981, reiterating its prayer that its petition for review on certiorari be given due course.[22]

On March 8, 1982, we issued a resolution (a) denying petitioner's second motion for reconsideration for lack of merit; and (b) lifting immediately the suspension of all proceedings and processes in or issued by the trial court in Civil Case No. 939 as ordered in our resolution of August 10, 1981.[23]

A third motion for reconsideration was filed by petitioner on March 26, 1982,[24] but the same was denied by this Court with finality on April 26, 1982.[25] The resolution of December 16, 1981 having become final and executory, entry of judgment was made July 7, 1982.[26]

Pursuant to the writ of execution previously issued by the trial court,[27] the rights, interests and participations of petitioner over certain real properties were thereafter levied upon and sold at public auction to private respondent Sastre as the highest bidder, in full satisfaction of the award in her favor. It is the aforementioned writ of execution and its implementation which is now the subject of the instant petition.

Succinctly, it is the contention of herein petitioner that while the court a quo can validly award in favor of private respondent the commissions she is claiming which it found to be only in the amount of P64,800.00, and the actual, moral, exemplary damages and attorney's fees, as reduced by the Court of Appeals, the trial court had no

jurisdiction in awarding the sum of P642,042.23 which included the supposed overpayment, which claim petitioner insists was neither alleged in the amended complaint nor proved in evidence during the trial and thus is irregular, invalid and void. Being so, the writ of execution issued for its satisfaction and all other proceedings pursuant thereto are also void. Corollarily, petitioner insists that the dismissal of its petition for review by this Court did not close the door to the writs of certiorari herein prayed for.[28]

Private respondents, on the other hand, counter that the issue of overpayment was sufficiently alleged in the amended complaint, specifically in paragraph 7 thereof which states:

"7. That plaintiffs hereby collect and demand from the defendant to give and deliver the sum of P160,000.00 to them and/or such sum of money due to the plaintiffs, and to render the necessary and accurate accounting of the amount of the commission deposited by plaintiffs with the defendant (underscoring for emphasis)."

Assuming arguendo that the issue of overpayment was not raised in the pleadings, the same was heard in evidence during the trial with the consent, express or implied, of the parties concerned, when respondent Sastre offered in evidence the checks subject of Exhibits K, K-1 to K-101, with the counsel for petitioner even admitting the genuineness and due execution of the checks aforementioned. In any event, said private respondent calls the attention of this Court to the fact that the issues raised in the present petition have already been carefully passed upon by us in our resolution of December 16, 1981. As a consequence, the petition should be dismissed for having been manifestly brought to unduly delay the full satisfaction of the judgment debt.[29]

After a careful consideration of the issues raised and the arguments interposed by the parties in support of their respective positions, we resolve to reject the instant petition.

From the foregoing recital of the antecedents of this case and the particular contentions of the parties, it is easily discernible that the issues raised by petitioner herein are indeed the same issues it raised in its petition for review in G.R. No. 56343 and which were duly passed upon in the aforequoted resolution issued by the Court on December 16, 1981. Significantly, the Court did not only rule on the issue of the tardiness of the petition in said G.R. No. 56343 but also on the merits of the principal query on overpayment. That resolution, as earlier mentioned, became final and executory on April 26, 1982 and the consequent entry of judgment was made on July 7, 1982.

The further implementation of the questioned writ of execution is in fact only in pursuance of the judgment in CA?G.R. No. 50233-R which became final and executory consequent to our aforesaid resolutions in G.R. No. 56343. If a writ cannot be recalled by reason of any defense which could have been made at the time of the trial of the case, with more reason can it not be recalled to practically change the terms of a judgment that had become final.[30] Execution is the fruit and end of the law, the life of the law and the end of the suit.[31]

Verily, there can be no dispute on the well entrenched rule that every litigation must come to an end. Access, to the court is guaranteed. But, there must be a limit to it. Once the appellant's right has been adjudicated in a valid final judgment, as in the case at bar, he should not be granted an unbridled license to come back for another try even at the risk of legal infirmities and errors that the judgment may contain.[32]

In the same breath, the prevailing party, in this case the private respondent, ought not to be harassed by subsequent suits. For, if endless litigations were to be encouraged, unscrupulous litigants will multiply in number to the detriment of the administration of justice.[33]

While there are recognized exceptions to this rule, suffice it to state that we find no cogent reason for their application in the case at bar. For all intents and purposes, all the requisites of the principle of res adjudicata are attendant as to leave no doubt that the dismissal by this Court of petitioner's petition for review in G.R. No. 56343

should have written finis to this seemingly interminable controversy between the parties which was the subject of the petition therein and now of the petition at bar.

ACCORDINGLY, the petition for the writs herein prayed for is hereby DISMISSED and the temporary restraining order of June 13, 1983 is LIFTED, with costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.
Sarmiento, J., on leave.

[1] Presided over by Judge Fortunato A. Vailoces.

[2] Rollo, 103-104.

[3] Ibid., 69-72.

[4] Then known as the Court of First Instance, Branch II, Butuan City and presided over by Judge Manuel Lopez Enage.

[5] Rollo, 92.

[6] Penned by Justice Porfirio V. Sison, with Justices Jorge R. Coquia and Elias B. Asuncion concurring.

[7] Rollo, 97-101.

[8] Rollo, G.R. No. 56343, 2-3.

[9] Ibid., id., 10.

[10] Ibid., id., 12-13.

[11] Ibid., id., 13-A.

[12] Ibid., id., 14-15.

[13] Ibid., id., 25-44.

[14] Ibid., id., 60-62.

[15] Ibid., id., 69-75.

[16] Ibid., id., 76.

[17] Ibid., id., 80-102.

[18] Ibid., id., 105-109.

[19] Ibid., id., 122-126.

[20] Ibid., id., 135.

[21] Ibid., id., 175-B.

[22] Ibid., id., 181-194.

[23] Ibid., id., 203-A.

[24] Ibid., id., 212-229.

[25] Ibid., id., 230.

[26] Ibid., id., 231.

[27] Footnote 2, ante.

[28] Rollo, 26-62.

[29] Ibid., 122-138.

[30] International School Inc. vs. Minister of Labor and Employment, et al., 175 SCRA 507 (1989).

[31] De Borja vs. Court of Appeals, et al., 153 SCRA 175 (1988); Garcia, et al. vs. Echiverri, et al., 132 SCRA 631 (1984).

[32] Ngo Bun Tiong vs. Sayo, etc., et al., 163 SCRA 237 (1988); Pacquing vs. Court of Appeals, et al., 115 SCRA 117 (1982); Ferinion vs. Sta. Romana, et al, 16 SCRA 370 (1966).

[33] Pacquing vs. Court of Appeals, et al., supra.

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