

**THE CONSOLIDATED BANK AND TRUST CORPORATION
(SOLIDBANK), CRISOSTOMO M. DE LOS REYES, AMANTE PERALTA,
NESTOR ULET AND LORENZO SAGA, PETITIONERS, VS. HON.
INTERMEDIATE APPELLATE C...**

G.R. No. 73341. August 21, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition to review and set aside the Decision* of the Intermediate Appellate Court, First Civil Cases Division dated October 11, 1985, in its AC-G.R. CV No. 01839, entitled "Amado Apostol et al. versus Crisostomo de los Reyes, et al.", which modified the decision rendered by the Regional Trial Court, Branch CXVI, Pasay City and the Resolution dated January 6, 1986 which denied the Motion for Reconsideration.

Petitioner Consolidated Bank and Trust Corporation (Solidbank) is a banking corporation duly organized and existing under Philippine Laws, while petitioner Crisostomo de los Reyes is its legal counsel. The other petitioners Amante Peralta, Nestor Ulet and Lorenzo Saga were security guards employed by Solidbank. All the petitioners were the defendants-appellants in AC-G.R. CV No. 08139.

Respondent Nation's Knitting Enterprises, Inc. (Knitting, for short) is a duly organized corporation under Philippine Laws, respondent Amado Apostol (now deceased) was its General Manager, respondent Cheng Kang Tarce was its Plant Manager and respondent Victorino Ganal was its driver.

It appears that on January 16, 1974, Knitting, Inc. through its treasurer Kiok Lay, executed a Deed of Real Estate and Chattel Mortgage in favor of the Consolidated Bank and Trust Corporation (Solidbank) to secure a loan of P900,000.00. The mortgage was constituted on two (2) parcels of land covered by T.C.T. Nos. 18112 and 14985 and on the building and improvements existing thereon, as well as on various types of machineries.

On April 30, 1979, Knitting again through its treasurer Kiok Lay, executed an Amendment to the Deed of Real Estate and Chattel Mortgage to secure additional credit facilities worth P2,500,000.00. Knitting thus obtained an additional loan of P2,500,000.00 for which it executed three (3) promissory notes all signed by Kiok Lay. The Amendment covered the same properties described in the first Deed of Mortgage and various types of machineries which might thereafter be acquired by Knitting.

Letters of credit were extended to Knitting in June, 1980, September 16, 1980, August 12, 1980 and October 3, 1980, by virtue of which Solidbank paid P1,796,768.70 to various suppliers of Knitting on the basis of sight drafts which the suppliers issued. Knitting took possession of the goods delivered by the suppliers after executing trust receipts, binding itself to hold the goods covered by the receipts in favor of Solidbank, to sell them and deliver the proceeds to Solidbank or to return the goods to it if not sold. In addition to the Deed of Real Estate and Chattel Mortgage, Kiok Lay and Manuel Kiok executed a continuing guaranty constituting themselves as sureties for the payment of the loan.

Knitting defaulted in the payment of its obligations, for which reason, Solidbank asked the sheriff to foreclose the mortgage. The total obligation of Knitting as of November 1981 amounted to P4,108,831.00.

To stop and prevent the ensuing foreclosure, Knitting, Kiok Lay and Manuel Kiok filed a petition for injunction with the Court of First Instance of Pasay City. The case was docketed as Civil Case No. 9609-P and raffled to Judge Manuel V. Romillo, Jr. They alleged that the Deed of Real Estate and Chattel Mortgage executed on January 16, 1974 was null and void because Kiok Lay who negotiated for the loan was not authorized to do so, either under the Articles of Incorporation of Knitting or by its Board of Directors; that Kiok Lay had already paid the sum of P900,000.00 from his personal funds; that Solidbank extended the additional loan of P2,500,000.00 to Kiok Lay after the obligation secured by the first mortgage had been paid and despite knowledge of the fact that Kiok Lay was not authorized to enter into such contract. It was further alleged that Kiok Lay was allegedly and maliciously made to sign the Amendment to the Real Estate and Chattel Mortgage; that the said Deed of Mortgage could no longer be amended because it had already been fully paid for by Kiok Lay; that because of the false statement made under oath by Solidbank's comptroller Corazon R. Dayco, the Clerk of Court and the Sheriff of Pasay City were misled into issuing a Notice of Sheriff's Sale on November 21, 1981 which was published in the *Nuevo Horizonte* issues of November 14 and 21, 1981.

On November 27, 1981, Judge Romillo issued a temporary restraining order enjoining Solidbank from further publishing the notice of sale and from proceeding with the sale.

In due time, Solidbank filed its answer. It alleged that Kiok Lay was authorized by various resolutions of the board of directors of Knitting to negotiate loans with Solidbank, to sign documents and other papers in connection with such loans and particularly to mortgage corporate assets and to sign checks. It also claimed that Knitting benefited from the loans and therefore was estopped to deny them. As a counter-claim, Solidbank prayed that Knitting be ordered to pay compensatory, exemplary and/or liquidated damages as stipulated in the promissory notes because of the filing of a baseless and frivolous action and 10% of the amount due as attorney's fees. In the alternative, it asked that Knitting be ordered to pay P2,500,000.00 with interest at the rate of 3% per annum until the amount was fully paid and 10% of the amount due by way of attorney's fees; the sum of P1,796,768.78 covered by trust receipts with interest at the rate of 14% per annum plus 10% attorney's fees and 3% penalty agreed upon in case of litigation. Solidbank also prayed for the attachment of the properties of Knitting, as security for the satisfaction of its obligation on the ground that said Knitting together with Kiok Lay and Manuel Kiok were guilty of fraud in contracting the obligation and that there was no sufficient security for Solidbank's claims other than the properties sought to be attached.

By virtue of Solidbank's alternative counterclaim, Judge Romillo in said Civil Case No. 9609-P, issued an order of attachment on December 17, 1981. The following day December 18, 1981 a writ of preliminary attachments was issued and upon Solidbank's posting of a good and sufficient bond the sheriff attached the properties of Knitting.

However, on January 7, 1982, upon motion of Knitting, Judge Romillo issued the following Order:

"Pending resolution of the various incidents scheduled for hearing on January 18, 1982 at 8:30 o'clock in the morning, in order that the issues therein raised may not become moot and academic, it is necessary that the present status quo be maintained.

"WHEREFORE, Deputy Sheriff Umberto C. Ramos is hereby ordered to desist from further enforcing the writ of preliminary attachment heretofore issued, until further orders from this Court."

The following day, January 8, 1982, Atty. Crisostomo M. de los Reyes, counsel of Solidbank issued an instruction to the deputized Security Guards in the following tenor:

"All properties levied as of date hereof remain in custodia legis but no further enforcement of the order of attachment is allowed. With the status quo order, all levied proper-ties shall remain guarded by you and no release to any party effected."

Knitting, Amado Apostol, Cheng Kang Tarce and Victorino Ganal (herein private respondents) claiming to have been damaged as a conse-quence of the enforcement of the foregoing instruction of Atty. Crisos-tomo de los Reyes, filed on March 1, 1982, a complaint for damages against Solidbank, Crisostomo M. de los Reyes, Amante Peralta, Nestor Ulet and Lorenzo Zaga (herein petitioners) with the then Court of First Instance of Rizal, Pasay City. The case was raffled to Branch XXVII (now Branch CXVI of the Regional Trial Court) presided by Judge Dionisio N. Capistrano, and docketed as Civil Case No. 9837-P. Among others, it is alleged in the complaint that due to the enforcement of the instruction/directive of Atty. Crisostomo de los Reyes, Knitting was not able to ship its merchandise to its would-be customers here and abroad causing the eventual cessation of its business operations, loss of profits, credit, goodwill and good business reputation resulting in damages in the amount borne out by the evidence to be presented.

Petitioners as the then defendants filed a Motion to Dismiss on April 19, 1982, on the following grounds: (a) pendency of Civil Case No. 9609-P; (b) the new parties are not parties in interest; (c) the incidents recited in the complaint should be resolved in Civil Case No. 9609-P; (d) present action is duplicatory of plaintiffs' application for damages upon the attachment bond and (e) filing of the present action is unethical and puerile.

On June 18, 1982, petitioners filed a Supplemental Motion to Dismiss arguing that inasmuch as the causes of action stemmed from alleged acts committed as a consequence of the attachment proceedings, the relief therefrom can be threshed out only in Civil Case No. 9609-P, where the attachment writ was issued.

These motions were resolved by Judge Capistrano in his Order dated April 20, 1983, "deferring resolution thereof until after the trial on the merits."

On May 16, 1983, petitioners filed a Motion for Reconsideration stressing the ruling in the Rejuso vs. Estipona case (72 SCRA 513) that whatever relief a party may get by reason of erroneous attachment must be litigated in the same case where the attachment writ was issued.

On May 18, 1983, petitioners filed a motion for extension of time to file answer, praying for 15 days to file the same to be counted from the receipt of the resolution on their motion for reconsideration.

On June 23, 1983, Judge Capistrano issued his Resolution holding that petitioners' motion for reconsideration is considered as not filed and that the motion for extension to file the answer is not entitled to any consideration at all. Petitioners received copy of this resolution on June 30, 1983. On July 6, 1983, petitioners filed their answer with counterclaim.

Meanwhile, however, on June 27, 1983, and upon motion of private respondents, Judge Capistrano declared petitioners in default and directed the private respondents as the then plaintiffs "to present their evidence ex-parte tomorrow, June 28, 1983 at 8:30 in the morning." Private res-pondents thus presented their evidence ex-parte and thereafter on August 18, 1983, Judge Capistrano rendered his decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering either of the two defendants The Con-solidated Bank and Trust Corporation (Solidbank) or Amante Peralta or Nestor Ulet or Nestor Saga to pay:

"A. To plaintiff Nation's Knitting Enter-prises, Inc.:

"1. P726,000.00 as actual damages for one (1) year due to loss of business with Chup Son Trading Co. of Hongkong;

"2. P214,500.00 as actual damages for one (1) year due to loss of business with Rock-a-bye, Ltd., of England;

"3. P3,758,872.00 as actual damages for the stocks-in-trade or finished products or merchandise which were not allowed to be shipped to David Trading Co., and K.P. Glory Corporation, both of Hongkong, which products eventually rotted and/or passed out of fashion;

"4. P3,000,000.00 as actual damages for one (1) year for damage to and loss of credit reputation and goodwill, and forced cessation of operations;

"B. To plaintiff Amado Apostol, the sums of P250,000.00 and P100,000.00 as for actual or compensatory and moral damages, respectively;

"C. To plaintiff Cheng Kang Tarce, the sum of P200,000.00 as and for actual damages;

"D. To plaintiff Victoriano Ganal, the sum of P50,000.00 as and for actual or compensatory damages;

"E. To all the plaintiffs, in the proportion fixed by the preceding awards above the total sum of P1,000,000.00 as and for exemplary or corrective damages and the further sum of P50,000.00 as and for attorney's fees; and

"F. The costs of the above-entitled suit." (pp. 108-109, Rollo)

Petitioners appealed to the Intermediate Appellate Court which appeal was docketed as AC-G.R. CV No. 01839, contending that the lower court erred: (a) in not dismissing the complaint; (b) in denying petitioners' motion for extension of time to file answer; (c) in declaring petitioners in default; (d) in proceeding with the case without acting on the answer with counterclaim filed by petitioners; and (e) in rendering judgment by default and awarding huge amounts in the form of damages.

In its now assailed Decision dated October 11, 1985, the Intermediate Appellate Court affirmed the lower court's decision with modification, as follows:

"WHEREFORE, PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED, with modification that actual damages in favor of Amado Apostol, Cheng Kang Tarce and Victoriano Ganal be deleted; and moral damages awarded in their favor be reduced as follows: P50,000.00 as moral damages in favor of Amado Apostol; P75,000.00 as moral damages in favor of Cheng Kang Tarce and P25,000.00 as moral damages in favor of Victoriano Ganal; and exemplary damages reduced to P250,000.00 to be paid to all the plaintiffs in the proportion of the damages awarded to them.

"SO ORDERED."

(p. 120, Rollo)

Substantially the Court of Appeals ruled:

- (1) that Solidbank erred in asking for the dismissal of the damage suit against it because the cause of action therein is different from any prejudice that its attachment of Knitting's properties had or could have caused;
- (2) that for the same reason, both cases could not have been consolidated, and assuming the propriety of consolidation, still this was purely discretionary on the part of the court (the rule having used the word "may");
- (3) that Solidbank had properly been declared in default for even its motion for extension of time to file an answer had been filed beyond the reglementary period;
- (4) and that Solidbank was not entitled to file a motion for reconsideration of the denial of its motion to dismiss.

Petitioners' motion to reconsider the aforesaid decision having been denied, they now come before Us through the instant petition praying that it be given due course and after hearing judgment be rendered reversing and setting

aside the assailed decision of respondent court and that the complaint in Civil Case No. 9837-P be ordered dismissed, or in the alternative, that this case be remanded to the court of origin, Branch CXVI, Regional Trial Court Pasay City, for further proceedings.

The petition was given due course in the Resolution of the Second Division dated April 28, 1986 and the private respondents were required to file their answer which they did on June 23, 1986.

The grounds now relied upon by petitioners are the same errors they assigned before the respondent court namely ? that the lower court should have dismissed this case because of the pendency of Civil Case No. 9609-P or that the lower court should have consolidated this case with the said Civil Case No. 9609-P; that the lower court erred in declaring petitioners in default and that the damages awarded are not warranted by the evidence.

Anent the issue of consolidation of this case with Civil Case No. 9609-P on the strength of the doctrine laid down in the case of *Rejuso vs. Estipona* (72 SCRA 509) that "any relief against such attachments could be disposed of only in that case", suffice it to state that this doctrine applies in the case at bar. The damages being claimed here are indirectly for damages resulting from the attachment because if the attachment had not been made, and the Order of Judge Romillo re-garding the "status quo" at the time that partial attachment had already been made had not been issued, there would not have arisen the confusing and conflicting interpretations of said order. Otherwise stated, the action of damages was essentially the result of the attachment case or incident. Consolidation, being eminently proper, should have been done. Be it noted that the action of private respondents here for damages because of the attachment has already been terminated, the final judgments thereon being sufficiently clear that the action for damages would not lie for the simple reason that the attachment was proper. (This is evident in G.R. No. 72053 entitled *Nation's Knitting Enterprises, Inc.; Kiok Lay alias Ching Yu Dee and Spouse; Manuel Kiok and Spouse and Honorable Manuel V. Romillo, Jr., as Judge of the Regional Trial Court, National Capital Judicial Region, Branch CX, Pasay City, Petitioners, versus The Consolidated Bank and Trust Corporation (Solidbank) and The Honorable Intermediate Appellate Court, Respondent* (December 4, 1985) and G.R. No. 68440 entitled *Nation's Knitting Enterprises, Inc.; Kiok Lay alias Ching Yu Dee and Spouse; and Manuel Kiok and Spouse, and Hon. Manuel V. Romillo, Jr., in his capacity as Judge, Regional Trial Court, National Capital Judicial Region, Br. CX, Pasay City, Petitioners versus The Consolidated Bank and Trust Corporation (Solidbank) and The Intermediate Appellate Court, Respondents* (October 10, 1984) (which respectively denied review of CA-G.R. SP No. 04915[1] and CA-G.R. SP No. 01494[2] and both of which had held that the questioned attachment was proper). Surely, *res judicata* bars Knitting's complaint.

With respect to the default judgment by the trial court, it should be emphasized that the trial court should have already decided the case, with Solidbank's Answer having been taken into consideration, said Answer being already before the Court.

On the issue of damages, We find the various awards by the respondent court completely unfair and unwarranted.

While as pointed out by the Court of Appeals actual damages may have been suffered by Knitting in view of its failure to profit from certain business transactions it had been accustomed to enter into, still this loss if it exists, is directly attributable to private respondents' fault. For instance, they could have immediately asked the trial court for a clearer order allegedly lifting the writ of preliminary attachment by saying so directly and expressly, and ordering the delivery of the properties already attached to the private respondents or resorted to appellate tribunals on the issue of said interpretations. Then again, to minimize any foreseen or unforeseen damage to it, Knitting could have tried to enter into substitute contracts. Upon the other hand let it be understood that the legal counsel of SOLIDBANK was correct in preventing the egress of properties already attached since the order of Judge Romillo mandated clearly the preservation of the "status quo". What was the "status quo" at that time? - simply

the continued holding of properties already attached, with no additional properties to be taken into custody. At any rate, if Knitting had any doubts about its meaning, it had the duty, as the alleged prejudiced entity to ask for judicial clarification as soon as possible.

In the light of the environmental circumstances attendant in this case, the assailed decision of the respondent Court is hereby SET ASIDE, and a new one is hereby rendered dismissing the case filed by private respondents against petitioners. No costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Melencio-Herrera, J., on leave.

* Penned by Court of Appeals Justice Leonor Ines Luciano (Ponente), with Justices Ramon G. Gaviola, Jr., Eduardo Caguioa, and Ma. Rosario Quetulio-Losa, concurring.

[1] The decision was penned by Justice Fidel P. Purisima, and concurred in by Justices Simeon M. Gopengco, Lino M. Patajo and Jose F. Racela, Jr. The Resolution on the Motion for Reconsideration was likewise penned and concurred in by the same Justices, except for Justice Simeon M. Gopengco.

[2] The decision was penned by Justice Vicente V. Mendoza and concurred in by Justices Serafin R. Cuevas and Luis A. Javelana. The Resolution on the Motion for Reconsideration was penned by Justice Vicente V. Mendoza.

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