

CITYTRUST BANKING CORPORATION, PETITIONER, VS. THE HONORABLE FOURTH DIVISION, COURT OF APPEALS AND WILLIAM SAMARA, RESPONDENTS.

G.R. No. 82009. April 10, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Can the execution of a final judgment be prevented by the appeal there from of a co-defendant? Can the said appeal inure to the benefit of the defendant who did not appeal? These are the issues in this appeal by certiorari from the resolution of the Fourth Division of the Court of Appeals[1] dated February 5, 1988 denying a motion for reconsideration of its earlier decision on the ground that the appeal of petitioner was filed way out of time, i.e., 51 days from notice of the decision of the Regional Trial Court (Branch 160) of Pasig, Metro Manila.[2]

The antecedent facts of the case are as follows:

On October 3, 1983, private respondent William Samara filed Civil Case No. 50248 entitled "William Samara, plaintiff, versus Citytrust Banking Corporation and Marine Midland Bank, NA, defendants" before Branch 160 of the Regional Trial Court in Pasig, Metro Manila.

The complaint alleged that private respondent purchased a US\$40,000.00 demand draft from petitioner Citytrust Banking Corporation (Citytrust) and that he invested the same in a joint venture with a certain Tony Mancuso for the purpose of bringing to the Philippines some American entertainers. The draft was drawn against Marine Midland bank, NA (Marine Midland) in favor of Thai International Airways since the amount represented the estimated cost of the air transportation of the entertainers. Sensing, however, that Tony Mancuso was not going to fulfill his part of the agreement, private respondent executed a stop-payment order on December 23, 1980 and gave specific instructions to petitioner Citytrust to immediately telex the same to its correspondent bank in America, Marine Midland. Both defendants confirmed that the demand draft was not yet paid. Consequently, Citytrust re-credited the dollar account of the private respondent in the amount of US\$40,000.00. However, after a lapse of seven (7) months, petitioner Citytrust debited the said dollar account in the amount of \$40,000.00 upon realizing that Marine Midland had debited the amount of \$40,000.00 from the account of Citytrust. Private respondent filed a protest regarding the debiting of his dollar account and demanded the return of the said amount.

The complaint further alleged that Tony Mancuso arrived in the Philippines in January 1981 and stayed in the country up to the middle part of the same year. Private respondent went on to say that he did not bother to collect from Mancuso the value of the bank draft inasmuch as Mancuso assured him that the same was never encashed. Private respondent also alleged that Mancuso had, since then, left the Philippines for an unknown destination thereby making it impossible to go after him.

Petitioner filed an answer with counterclaim and cross claim on January 4, 1984 while Marine Midland filed its counterclaim and crossclaim on January 16, 1984.

On March 4, 1986, the Regional Trial Court held Marine Midland and Citytrust jointly and severally liable to private respondent. The dispositive part of the decision of the trial court reads as follows:

"WHEREFORE, judgment is hereby rendered:

1. Ordering the defendants, jointly and severally, to pay the sum of \$40,000.00, plus twelve percent (12%) interest per annum from July 3, 1981, until full payment is made, and the further interest of 12% per annum on the accrued interest from December 23, 1980, up to the filing of the complaint on October 4, 1983, inclusive; exemplary damages in the sum of P100,000.00 and the sum of P50,000.00 as attorney's and costs;
2. Dismissing the defendants' counterclaims for lack of merit;
3. Ordering defendant Marine Midland to reimburse defendant Citytrust whatever amount the latter will be made to pay the plaintiff by reason of this judgment and costs."

Petitioner avers that on March 26, 1986 or nine days after it received a copy of the said decision, it was furnished a copy of the motion for reconsideration filed by Marine Midland seeking a reversal of the decision of the lower court against both itself and petitioner. Counsel for Marine Midland pointed out that the cause of action of the private respondent is not really against any of the defendant banks but against Tony Mancuso and that the only reason why the case was filed against the defendants is because "Mancuso is nowhere to be found and the plaintiff is left holding the proverbial empty bag."

On account of the failure of the petitioner to appeal during the reglementary period allowed for the same, private respondent filed a motion for execution of the decision of the lower court on April 29, 1986. Petitioner filed an opposition thereto on May 7, 1986.

However, on May 5, 1986, petitioner received a copy of the order of the lower court denying the motion for reconsideration of Marine Midland. This prompted the former to file a Notice of Appeal on May 7, 1986, or two days after the said order was received. The lower court, however, denied the appeal filed by petitioner and granted the motion for execution filed by private respondent. Petitioner then filed a motion for reconsideration which was, however, granted. The trial court gave due course to the appeal on the ground that "substantial justice demands the granting of the motion at bar." The trial court also set aside the order of execution on the ground that "the denial of the appeal and the giving of due course to the execution of the judgment as against said defendant at this point in time will work out an unjust situation as it will be conducive to force the defendant Citytrust to satisfy the judgment without being able to demand and be defrayed reimbursement from co-defendant Marine Midland as mandated in the decision appealed from, until the disposition of the case on appeal by the Intermediate Appellate Court who (sic) may either affirm or reverse the decision."

Thus, the case was brought on appeal to the Court of Appeals. Private respondent filed a motion to dismiss the appeal with the respondent appellate court after which the petitioner filed its comment thereto. On December 15, 1987, the appellate court resolved to grant the motion to dismiss filed by private respondent. A copy of the resolution was received by petitioner on December 23, 1987. On January 7, 1988, petitioner filed its motion for reconsideration praying that the resolution dated December 15, 1987 be set aside. The motion was, however, denied.

Hence, the instant petition. Two errors are assigned on part of the appellate court:

- I. THE RESPONDENT COURT ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, REVERSIBLE ON APPEAL, IN NOT HOLDING THAT THE APPEAL FILED BY PETITIONER'S CO-DEFENDANT, I.E., MARINE MIDLAND, INURED TO THE PETITIONER'S BENEFIT AS TO SUSPEND PETITIONER'S PERIOD TO APPEAL.

II. THE RESPONDENT COURT ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, REVERSIBLE ON APPEAL, IN FAILING TO RULE THAT PRIVATE RESPONDENT WILL NOT BE ENTITLED TO AN IMMEDIATE EXECUTION EVEN IF IT CAN BE ASSUMED THAT PETITIONER'S APPEAL WAS FILED BEYOND THE REGLEMENTARY PERIOD.

This Court finds the petition bereft of merit.

Petitioner argues that when Marine Midland filed a motion for reconsideration, it was intended to benefit both Marine Midland and itself. Petitioner explained that the motion sought the reversal of the decision of the lower court not only with respect to the judgment against Marine Midland but also as regards the liability of petitioner on the ground that the person who should be held liable is Tony Mancuso who, at present, is nowhere to be found.

The petitioner cites *Director of Lands vs. Reyes*[7] where this Court held that where the rights and liabilities of those who did not appeal and those of the party appealing are so interwoven and dependant on each other as to be inseparable, the reversal of the judgment as to one would operate as a reversal as to all.[8]

It must be noted that the two defendants, Marine Midland and Citytrust, filed cross claims against each other in their answer. Citytrust alleged that the proximate cause of the injury should be attributed to co-defendant Marine Midland when the latter failed to promptly inform Citytrust that the demand draft Citytrust issued was really paid by Marine Midland on December 22, 1980. For its part, Marine Midland alleged that Citytrust did not properly advise it of the actual circumstances relating to the dates of payment of the draft and of the receipt by the latter of the stop-payment instructions. The rights and liabilities of both parties concerned are not so interwoven in such a manner that their defenses are similar and that a reversal of the judgment as to one should operate as a reversal to the other. Furthermore, a perusal of the decision appealed from shows that Marine Midland, though jointly and severally liable with petitioner, is the one ultimately held responsible for the damages incurred by the private respondent inasmuch as the trial court ordered "defendant Marine Midland to reimburse defendant Citytrust of whatever amount the latter will be made to pay the plaintiff by reason of this judgment and costs." [9] Another factor negating the theory of the petitioner is the fact that both parties are represented by different counsels such that one cannot legally act for the other. Therefore, when Marine Midland filed its motion for reconsideration, it was acting for itself.

It has often been said that "dismissal of appeals on purely technical grounds is frowned upon, where the policy of the courts is to encourage hearings of appeals on their merits. The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice." [10] This does not mean, however, that any party may appeal from a decision at any time it may choose to file the same. In *Reyes vs. Court of Appeals*, [11] this Court enumerated the grounds for the allowance of an appeal filed out of time, i.e., fraud, accident, mistake or excusable negligence. In the case at bar, petitioner did not state any reason for its failure to file its appeal within the reglementary period. Petitioner did not even allege the existence of circumstances that would amount to fraud, accident, mistake or excusable neglect so as to provide a legal justification for its late appeal.

Moreover, the circumstances of the aforecited case show the weakness of the claim of petitioner. In the said case, the appellant filed a motion for new trial which did not set forth specifically the reasons in support of said ground and was, therefore, found to be pro forma. Hence, the motion did not suspend the running of the period to appeal, and the appeal filed more than thirty days from notice was not given due course. In the present case, petitioner did not do anything upon receipt of the decision of the trial court. It simply waited for the result of the motion filed by its co-defendant Marine Midland, a situation worse than that in *Reyes*.

With regard to the issue of whether or not private respondent is entitled to the immediate execution of the decision

of the trial court, the answer should be in the affirmative.

Section 1, Rule 39 of the Rules of Court provides that "(e)xecution shall issue only upon a judgment or order that finally disposes of the action. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected." Having failed to appeal during the reglementary period, the decision of the Regional Trial Court against petitioner had become final and executory against petitioner thereby making it the ministerial duty of the trial court to grant the motion for execution filed by the prevailing party.

The argument of the petitioner to the effect that execution should not be allowed during the pendency of the appeal of its co-defendant inasmuch as the same would result in an absurd situation in case the findings of the trial court are reversed by the Court of Appeals, has no leg to stand on. The law is clear and admits of no other interpretation. A final judgment must be executed against the defeated party.

Furthermore, the Regional Trial Court held the two defendants jointly and severally liable to the plaintiff. Therefore, whether or not Marine Midland is absolved from liability on appeal is of no moment. The fact remains that the judgment against Citytrust had already become final and executory. Thus, there is no valid ground for the trial court to deny the motion for execution filed by private respondent at this point in time.

WHEREFORE, premises considered, the petition is DENIED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Penned by Associate Justice Jorge R. Coquia, concurred in by Associate Justices Josue N. Bellosillo and Venancio D. Aldecoa.

[2] Penned by Judge Rafael de la Cruz.

[3] Decision, dispositive portion, page 4.

[4] Page 113, Rollo.

[5] Page 40, Rollo

[6] Ibid.

[7] 69 SCRA 416 (1976).

[8] Emphasis supplied. The ruling reiterates the doctrine laid down in *Municipality of Orion vs. Concha*, 50 Phil. 679 (1927).

[9] Paragraph 3, dispositive portion of the decision of the trial court; page 87, Rollo.

[10] *Guballa vs. Court of Appeals*, G.R. No. 79403, December 19, 1988.

[11] 74 Phil. 235 (1943).

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