

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

G.R. No. 92591. April 30, 1991

Ponente: GUTIERREZ, JR. J.

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GUTIERREZ, JR. J.:

The Court is beset with the issue involving two defendants in a case for recovery of a sum of money where the trial court adjudged them to be jointly and severally liable as judgment debtors to pay the plaintiff but who are now required, as a result of a modification on appeal by only one of them, to pay substantially different amounts while being solidarily liable.

As a prefatory note, this is the second time the petitioner has gone to this Court but the issues raised at the first instance are distinct from the one at bar.

The case arose from a complaint filed by private respondent William Samara, an American who does business in the Philippines, against petitioner Citytrust Banking Corporation (hereinafter referred to as Citytrust) and a foreign bank, Marine Midland Bank, N.A. (hereinafter referred to as Marine Midland).

The facts as established by the trial court show that plaintiff-private respondent Samara purchased on December 10, 1980 from defendant petitioner Citytrust Bank Draft Number 23681 for US \$40,000.00, the payee being Thai International Airways and the corresponding bank in the United States or the drawee, defendant Marine Midland. On December 23, 1980, Samara executed a stop-payment order of the bank draft instructing Citytrust to inform Marine Midland about the order through telex. Citytrust transmitted the message to Marine Midland the next day and followed it up with a cable, which the latter bank acknowledged to have received on January 14, 1981 stating in its receipt that it has noted the stop-payment order and has not paid the bank draft. Citytrust credited back Samara's account for U.S. \$40,000.00 due to the non-payment. After seven months or on July 3, 1981, Citytrust re-debited Samara's account for U.S. \$40,000.00 upon discovering that Marine Midland had already debited Citytrust's own account for the same amount allegedly on December 22, 1980. Despite the alleged discovery, however, there is evidence to show that Marine Midland informed Citytrust through a letter of the non-payment or non-encashment of the bank draft as of August 4, 1981. It is also shown that Marine Midland even confirmed in a telex letter dated August 31, 1981 that the bank draft had not been paid as of that date.

Based on the above findings, the trial court brushed aside Marine Midland's contention that it had already paid the bank draft of Samara on December 22, 1980 or before it received the stop payment order. The trial court was not convinced regarding the denial of the confirmation made as to the non-payment of the bank draft since the time it received the stop payment order. Marine Midland was held bound by its letters admitting knowledge of the stop payment order and compliance with it. The trial court also overruled the ground relied on by Citytrust in re-debiting Samara's dollar account, i.e., the discovery that Marine Midland debited Citytrust's account before the stop payment order was given by Samara, this being unjustifiable.

Hence, a decision was rendered on March 4, 1986, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

1. Ordering the defendants, jointly and severally, to pay the plaintiff the sum of US \$40,000.00, plus twelve percent (12%) interest per annum from July 3, 1981, until full payment is made, and the further interest of twelve percent (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 One Hundred Thousand Pesos (P100,000.00) and the sum of Fifty Thousand Pesos (P50,000.00) as and for attorney's fees, and costs;
2. Dismissing the defendant's counter-claims for lack of merit;
3. Ordering 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." (Rollo, pp. 29-30)

Only Marine Midland filed a motion for reconsideration of the decision. It was denied. The petitioner did not do anything except to move for a reconsideration of an order of execution of the judgment against it which was granted.

The petitioner and Marine Midland filed separate appeals. The petitioner's appeal was, however, dismissed on December 15, 1987 for having been filed out of time or fifty-one (51) days after (i.e., May 7, 1986) it received a copy of the trial court decision on March 17, 1986. A motion to reconsider the dismissal was denied by the Court of Appeals.

On February 26, 1988, the petitioner questioned before the Supreme Court the dismissal of its appeal. That case was docketed as G.R. No. 82009 where the petitioner raised the following issues: (1) whether or not the timely appeal of Marine Midland inured to petitioner's benefit; and (2) whether or not plaintiff-private respondent Samara was entitled to immediate execution even assuming the petitioner's appeal was indeed filed out of time.

While the petition for certiorari to review the dismissal of the appeal was still pending before this Court, the Court of Appeals on February 23, 1989 affirmed the trial court decision with modification consisting of a reduction of the rate of interest and attorney's fees, as well as the exclusion of exemplary damages. Thus, the dispositive portion of the decision of the appellate court in CA-G.R. CV No. 14128 reads:

"WHEREFORE, judgment is hereby rendered AFFIRMING the Decision appealed from except paragraph 1 thereof which is hereby modified to read as follows:

1. Ordering the defendants jointly and severally, to pay the plaintiff the sum of US\$40,000.00, plus six percent (6%) interest per annum from July 3, 1981 until full payment is made, and the sum of Ten Thousand (P10,000.00) Pesos, as and for attorney's fees." (Rollo, pp. 45-46)

About a month and a half later or on April 10, 1989, this Court, through its First Division, denied the petition in G.R. No. 82009 for lack of merit. In response to the allegation that the prescriptive period for filing an appeal was also suspended as to the petitioner when co-defendant Marine Midland filed a motion for reconsideration, the Court ruled that the rights and liabilities of the two defendants are not so interwoven as to show similarity in defenses and warrant reversal of the judgment as to both. This Court stressed specifically the finding of the appellate court that although the petitioner and Marine Midland were solidarity liable, only the latter was ultimately held responsible for damages because it was the one ordered to reimburse the petitioner for "whatever amount" the petitioner will be made to pay the plaintiff by reason of the judgment. (See *Citytrust Banking Corp. v. Court of Appeals*, 171 SCRA 758 [1989]) Moreover, in filing a motion for reconsideration, Marine Midland was in fact acting only for itself. Regarding the second issue, we held that respondent Samara is entitled to immediate execution when the trial court decision became final and executory as to the petitioner. In overcoming the petitioner's argument that execution pending appeal of its co-defendant should not be allowed to prevent an

absurd result in case of possible reversal, we held that the law is clear that a final judgment must be executed against a defeated party. Since both defendants are jointly and severally liable, it is irrelevant whether or not the co-defendant would be absolved.

Some four months later or on August 7, 1989, the Supreme Court declared the decision in G.R. No. 82009 to be final and executory. The petitioner's motion for reconsideration was denied.

On September 28, 1989, Samara filed a motion for execution which the trial court granted on October 23, 1989. The petitioner assailed the Order of Execution before the Court of Appeals on November 6, 1989 in CA-G. R. SP No. 19176. The trial court was upheld and subsequent motion for reconsideration was denied.

Hence, the instant petition was filed on March 29, 1990 which raises the main issue of whether or not the respondent appellate court committed reversible error in ruling that the liability of the petitioner should be based on the original decision of the trial court and not the modified one.

The private respondent contends that the petition is barred by *res judicata* alleging that the issue in the case at bar had already been raised, passed upon, and judicially determined by this Court in G.R. No. 82009.

It is our considered opinion that the issue here is distinct from the ones raised earlier. In the present petition, the Court is faced with the issue of the propriety of the execution of judgments in favor of private respondent Samara who is entitled to recover on execution: against the petitioner, the amount of US\$40,000.00 plus 12% compounded interest per annum, exemplary damages of P100,000.00, attorney's fees of P50,000.00 and costs; and as against Marine Midland, the amount of US \$40,000.00 plus 6% simple interest per annum and attorney's fees of only P10,000.00.

We are less concerned now with the issues of whether or not a co-defendant's appeal inures to the benefit of another who failed to appeal on time and on the right of a judgment creditor to immediate execution of a final and executory judgment since such issues have become moot and academic.

It is worthy to note that the Court was not apprised of the February 23, 1989 decision of the Court of Appeals until after we had promulgated a decision denying Citytrust's petition for certiorari to review the dismissal of its own appeal. We were so notified through Citytrust's motion for reconsideration of our decision in G.R. No. 82009. It is a sad fact, however, that the motion did not present sufficiently compelling grounds to convince the Court to rule otherwise on the issues presented in G.R. No. 82009 which pertain to the validity of the dismissal of the petitioner's appeal.

The present petition was given due course in line with our settled rule that while a decision has already become final and executory and can no longer be challenged, the manner of its execution can be reviewed by proper appeal (*Abbot v. National Labor Relations Commission*, 145 SCRA 206 [1986]). It is not only the difference in the issue raised that makes us allow this petition. It is also because of a different Court of Appeals decision (this time in CA-G.R. SP No. 19176) that is the subject of our review. The petitioner now assails the affirmation of the order of execution based on the trial court judgment in spite of the modified judgment which reduced the liability of co-defendants to pay private respondent. What bothers the private respondent is the similarity of the arguments used by the petitioner in all the pleadings filed with this Court in G.R. No. 82009 and in the present petition.

The Court reiterates what it has held in the *Abbot* case:

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"In the instant case, however, what is sought to be reviewed is not the decision itself but the manner of its execution. There is a big difference. While it is true that the decision itself has become final and executory and

so can no longer be challenged, there is no question either that it must be enforced in accordance with its terms and conditions. Any deviation therefrom can be the subject of a proper appeal." (pp. 209-210)

The petitioner alleges that the appellate court decision dated February 23, 1989 has superseded and rendered *functus officio* the March 4, 1986 decision of the trial court invoked by the private respondent and is applicable not only to Marine Midland but also to the petitioner.

The Court does not agree with this allegation which hinges on the petitioner's insistence that it can benefit from a reversal or modification of a judgment even if it has lost its own appeal. We do not depart from our earlier analysis in G.R. No. 82009 that the rights and liabilities of the petitioner and Marine Midland are not so interwoven in such a manner that their defenses are similar as to readily warrant an operative effect upon a party who failed to appeal.

As found by this Court in G.R. No. 82009:

"It must be noted that 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.'" (Citytrust Banking Corp. v. Court of Appeals, *supra* at page 765)

The Court is of the considered view that it was the trial court judgment that created a joint and several obligation to pay the private respondent certain sums. No solidary liability as between them existed from the drawer-drawee relationship in the draft transaction.

The joint and several obligation imposed by the lower court had a three-fold purpose: (1) to declare the prevailing party to be entitled to recover damages on account of the prejudice which resulted from the acts of the co-defendants; (2) to give the prevailing party the right to proceed against either one of them to recover the amounts awarded to him; and (3) to impress upon Marine Midland its ultimate liability to fully reimburse the petitioner Citytrust consistent with the finding that the proximate cause of the injury to the private respondent was the wrongful deed of Marine Midland.

The trial court judgment, however, does not alter the fact that the respective defenses of the co-defendants are distinct on trial and even on appeal. Citytrust and Marine Midland were not in privity with each other in a transaction involving payment through a bank draft. A bank draft is a "bill of exchange drawn by a bank upon its correspondent bank, x x x issued at the solicitation of a stranger who purchases and pays therefor" (*Kohler v. First National Bank*, 289 P 47, 49, 157 Wash. 417 [1930]). It is also defined as an "order for payment of money." (*Polotsky v. Artisans Savings Bank*, Del. 180 A. 791, 792, 7 WW. Harr 142 [1935]) In the case at bar, Citytrust from which the private respondent purchased the bank draft, was the drawer of the draft through which it ordered Marine Midland, the drawee bank, to pay the amount of US \$40,000.00 in favor of Thai International Airways, the payee. The drawee bank acting as a "payor" bank is solely liable for acts not done in accordance with the instructions of the drawer bank or of the purchaser of the draft. The drawee bank has the burden of proving that it did not violate. Meanwhile, the drawer, if sued by the purchaser of the draft is liable for the act of debiting the

customer's account despite an instruction to stop payment. The drawer has the duty to prove that he complied with the order to inform the drawee.

The fact that the petitioner previously filed a cross-claim against Marine Midland does not make the former a party in the latter's appeal where all reliefs granted to the plaintiff and/or to the petitioner who was a co-defendant are up for review. The rights and liabilities of Citytrust as a defensive cross-claimant, which alleged that the proximate cause of the injury to the plaintiff was the wrongful action of Marine Midland, have already been litigated before the trial court which ordered full reimbursement in favor of Citytrust. Until petitioner Citytrust appeals for the review of the trial Court decision either in part or in toto, its rights and obligations as pre-determined cannot generally be affected by an appeal of a co-defendant. The respondent appellate court made this clear in its decision dated February 23, 1989, when it stated that even assuming that the petitioner may be considered an appellee, "such a standing was only with respect to the cross-claim against (appellant Marine Midland) and not with respect to its (petitioner's) liability in favor of private respondent Samara", the judgment on which had already become final and executory as to the petitioner. The petitioner cannot now present a subverted interpretation of what the appellate court meant.

The Court examines the execution of judgment rendered in favor of private respondent Samara from a perspective which shows a glaring disparity between the amounts which each of the two judgment debtors are bound to pay despite: (1) their being held jointly and severally liable, and (2) the right of one of them to be reimbursed for the whole amount of whatever it is obliged to pay.

A judgment may determine the ultimate rights of the parties on the same side as between themselves such that questions of primary and secondary liability between joint tort-feasors may be determined. (*Montgomery v. Blades*, 9 SE 2d 397, 217 NC 654 [1940]) This rule reaffirms that principles of joint and several liability have survived so that the plaintiff is entitled to recover the entire judgment from a single defendant even though the responsibility of that defendant for personal injury is of a lesser extent. (*Gorelick v. Department of State Highways*, 339 NW 2d. 635, 127 Mich. App. 324 [1983])

A review of the trial court judgment and the appellate court judgment here shows that the only difference is the amount of damages in paragraph 1 of the dispositive portion of the March 4, 1986 decision as restated and reduced in the February 23, 1989 decision. All other orders of the trial court were affirmed by the respondent appellate court. The joint and several obligation to pay the private respondent and the right of the petitioner to be reimbursed are retained. The problem now lies in interpreting the said modification as likewise reducing the total amount which can be executed against the petitioner.

If we go by a literal procedure, execution against petitioner Citytrust would be based on the March 4, 1986 decision. However, the Court can not close its eyes to the inexplicable situation where private respondent Samara would be given a choice of executing his claim for US \$40,000.00 plus bigger interest (compounded), exemplary damages, and attorney's fees from petitioner Citytrust, or US \$40,000.00 plus a smaller sum inclusive of simple interest and reduced attorney's fees from Marine Midland. Even if it is admitted that Citytrust would anyway be reimbursed for the whole amount which Citytrust may be ordered to pay, such reimbursement would be a circumvention of the appellate court's judgment that Marine Midland is liable only for the modified sum.

There are two final judgments arising from one and the same basic claim of Mr. Samara. The obligations arising from the same stop payment order on the same U.S.\$40,000.00 bank draft are sought to be enforced by the two conflicting final and executory judgments. We cannot enforce one judgment while allowing a violation of the other. We apply basic principles of justice and equity.

It is clear from the records that "the draft was not paid or cashed before the receipt of the stop payment order by

the appellant (Marine Midland)" but was certainly paid at some other date as evidenced by a reconciliation entry showing a debit of the corresponding amount in the books of Marine Midland. (See Rollo, pp. 40 and 42) Furthermore, there was substantial evidence to show that Marine Midland is the one actually responsible for the personal injury to the private respondent. The respondent court made the following findings, to wit:

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"It must be noted that it was the appellant's certifications and repeated reaffirmation of non-payment of the bank draft that led defendant Citytrust to re-credit appellees account. Also, the appellant negligently failed to implement the stop payment order upon receipt. It tarried in actually executing it until January 13, 1981. Furthermore, it was the appellant's debiting of the account of the defendant-Citytrust which also led the defendant Citytrust to again debit the appellee's dollar account despite prior acknowledgment of the non-payment of the draft. No doubt, it was the appellant's actuations that triggered the whole mess. Therefore, the lower court correctly ordered the appellant to reimburse defendant Citytrust of whatever amount the latter may pay the appellee by virtue of its judgment." (Rollo, p. 44)

Considering the above circumstances, the Court will not allow the absurd situation where a co-defendant who is adjudged to be primarily liable for sums of money and for tort would be charged for an amount lesser than what its co-defendant is bound to pay to to the common creditor and allowed to collect from the first co-defendant. Such a situation runs counter to the principle of solidarity in obligations as between co-defendants established by a judgment for recovery of sum of money and damages. Substantial justice shall not allow Marine Midland, which is the source of the injury afflicted, to be unjustly enriched either by the direct execution against him of the judgment for the reduced amount or by the indirect execution by way of reimbursement at a later time.

Additionally, the Court notes the modification made by the respondent court which ordered not only Marine Midland (the appellant therein) but both "defendants jointly and severally" to pay the new amount. Though, as a matter of procedure, the modification shall be applied only to the appellant, substantial justice and equity also demand that we re-interpret the decision to refer to petitioner Citytrust as well. There exists a strong and compelling reason to warrant an exception to the rule that a judgment creditor is entitled to execution of a final and executory judgment against a party especially if that party failed to appeal. (Olacao v. National Labor Relations Commission, 177 SCRA 38 [1989]; Quiqui v. Boncaros, 151 SCRA 416 [1987]; Orata v. Intermediate Appellate Court, 185 SCRA 148 [1990])

WHEREFORE, the decision of the Court of Appeals in CA-G.R. SP No. 19176 dated January 18, 1990 as well as the resolution denying reconsideration are hereby REVERSED and SET ASIDE. The court a quo is ordered to effect execution of its judgment subject to the modifications supplied by the Court of Appeals in its judgment on February 23, 1989.

SO ORDERED.

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

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