

ALLIED BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS, HONORABLE ROQUE A. TAMAYO, JUDGE, REGIONAL TRIAL COURT OF MAKATI, BRANCH 132 AND EKMAN & COMPANY, INC., RESPONDENTS.

G.R. No. 95223. July 26, 1996

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-95223/>

MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals,[1] dismissing the petition for certiorari filed by herein petitioner Allied Banking Corporation to set aside two orders, dated October 8, 1984 and November 15, 1984, respectively, of the Regional Trial Court of Makati, Branch 132, in Civil Case No. 7500. It appears that on October 8, 1981, private respondent Ekman & Company Inc. (Ekman & Co.) obtained a loan in the amount of P5,700,000.00 from petitioner Allied Banking Corporation (hereafter called Allied Bank). Private respondent executed a promissory note, secured by US\$750,000.00 deposited in the Hongkong and Shanghai Bank in Hongkong. The transaction involves what is called in banking parlance as a back-to-back loan.

On December 15, 1982, Allied Bank filed a complaint[2] for sum of money against private respondent Ekman & Co. in the Court of First Instance of Pasig, Rizal. Upon the reorganization of the judiciary in 1983, the case was transferred to the Regional Trial Court in Makati, where it was docketed as Civil Case No. 649 and assigned to its Branch 136. Allied Bank alleged that after applying private respondent's dollar deposit to its indebtedness, there remained a balance of P387,936.08, exclusive of interest and other charges owing to it but despite demands made on private respondent Ekman & Co., the amount had not been paid. Petitioner prayed that private respondent be ordered to pay the amount, plus interest at the rate of 21% per annum and penalty charges at 1% for each month, as well as attorney's fees and the costs.

On December 29, 1983, the case was dismissed by the RTC for failure of Allied Bank to prosecute its case. However, upon petitioner's explanation that it did not know that its case had been transferred to Makati as a result of the reorganization of the courts, the RTC reconsidered its order and directed that summons be served on private respondent Ekman & Co. at South Superhighway corner Rockefeller Street, Makati, Metro Manila. The summons was returned by the sheriff unserved, on the ground that private respondent had moved out of the address given by petitioner. For this reason the case was ordered archived by the court.

On June 6, 1984, having received information that private respondent was holding office at 470 San Andres Street, Malate, Manila, petitioner asked the court to reinstate the case and order private respondent to be served with summons at the new address. The court granted the petitioner's motion. Although at first private respondent could not be found at the address, it was successfully served the summons on August 24, 1984.

It appears that on June 6, 1984, private respondent itself had filed a complaint[3] against petitioner, for accounting. The case was also filed in the Regional Trial Court of Makati where it was docketed as Civil Case No. 7500, but assigned to Branch 132. Ekman & Co. alleged that on April 8, 1981, it had obtained a loan in the

amount of P5,700,000.00 from petitioner Allied Bank upon the security of a \$750,000.00-dollar deposit which was earning 14.5% interest per annum; that it asked Allied Bank for a statement of account and the return of its deposit which Allied Bank had applied to the payment of the loan but Allied Bank refused the demand. Private respondent prayed that petitioner be ordered to give private respondent an updated statement of account of its loan, to deliver to private respondent its dollar deposit less the amount of its loan, and to pay damages, attorney's fees and costs.

On September 28, 1984, petitioner Allied Bank moved to dismiss Civil Case No. 7500, citing the pendency of its action in Civil Case No. 649. Its motion was, however, denied in an order dated October 8, 1984 of Branch 132. Its motion for reconsideration was likewise denied in an order of the court dated November 15, 1984. The court ruled that private respondent Ekman & Co. would lose the P15,548.00 it had spent for filing fees, "without so much a fight, which naturally cannot be considered as fair and equitable" if the case were dismissed.[4]

On December 12, 1984, petitioner Allied Bank filed its answer. Accordingly, on March 21, 1985, a pretrial conference was held and on May 28, 1985, hearing began. However, on September 14, 1985, Allied Bank filed a petition for certiorari in the Court of Appeals questioning the orders of Branch 132 denying its motion to dismiss Civil Case No. 7500. Allied Bank then moved for a suspension of the proceedings in the case.

Meanwhile, Civil Case No. 7500 was transferred from Branch 132 to Branch 149 of the RTC, which dismissed the case for failure of private respondent to prosecute its case. However, upon representation of private respondent Ekman & Co. that its failure to proceed with the hearing was due to the fact that there was a pending petition for certiorari in the Court of Appeals, the RTC reconsidered its order. The case was thereafter transferred to another branch (Branch 56). As by then the Court of Appeals had ordered the elevation of the records of the case, no further proceedings were held. The Court of Appeals actually ordered the elevation of the records of Civil Case No. 649 also, as a consequence of which the proceedings in the two cases were suspended.

On August 31, 1990, the Court of Appeals rendered its decision, by dismissing the petition of Allied Bank and ordering the trial court to proceed with the hearing of Civil Case No. 7500. In sustaining the trial court's order denying petitioner's motion to dismiss the complaint of Ekman & Co., the Court of Appeals stated: (1) that when private respondent Ekman & Co. filed Civil Case No. 7500 on June 6, 1984, it did not know of the existence of Civil Case No. 649, as in fact the summons in that case was served on Ekman & Co. only on August 24, 1984; (2) that petitioner Allied Bank in bad faith did not inform private respondent of the fact that it had filed the complaint in Civil Case No. 649, despite the fact that on May 16, May 24 and June 5, 1984, private respondent had written Allied Bank signifying its readiness to pay its obligation and for this purpose asked for a statement of account; (3) that petitioner was estopped from questioning the order of denial of the trial court, considering that Allied Bank subsequently filed its answer and participated in the pre-trial conference and trial on the merits; and (4) that petitioner was guilty of laches in filing its petition for certiorari only ten (10) months after the denial of its motion to dismiss.

Hence this petition for review on certiorari. Petitioner contends that Civil Case No. 7500 should be dismissed because of the pendency of another case between the same parties for the same cause of action or, in the alternative, that the two cases should be consolidated. It therefore prays that the decision of the Court of Appeals be reversed.

First. The pendency of a case as a ground for the dismissal of actions,[5] like *res judicata*, is based on the policy against multiplicity of suits.[6] Since in most cases the actions are not filed at the same time, but one after the other, the question is which one should be dismissed.

The rule in general is that it should be the later case.[7] This rule, however, is not absolute. Indeed, as noted in

Teodoro v. Mirasol,[8] "the Rules do not require as a ground for dismissal of a complaint that there is a prior pending action. They provide that there is a pending action, not a pending prior action." It may happen, therefore, that the first case may have to be dismissed. For example, if, as in Teodoro, the action to fix the period of the lease was filed evidently to preempt an action for ejectment, the fact that it was filed first cannot be used as basis to dismiss the later action for ejectment.

Thus, in *University Physician Services, Inc. v. Court of Appeals*,[9] it was held that although the lessee's action for damages and injunction against the lessor was filed prior to the filing of the ejectment case against her, her complaint for damages and not the ejectment case should be dismissed. As the Court explained:

The issue of whether private respondent had the right to occupy subject apartment unit should be properly threshed out in an ejectment suit and not in an action for damages where the question of possession is likewise the primary issue to be resolved.

We cannot simply ignore the fact that private respondent, after her unjustified refusal to vacate the premises, was aware that an ejectment case against her was forthcoming. It is therefore evident that the filing of the complaint for damages and preliminary injunction was but a canny and preemptive maneuver intended to block the action for ejectment which petitioner was to take against private respondent.

The matter raised in the Regional Trial Court of Manila may be properly determined in the ejectment suit before the Metropolitan Trial Court, in consonance with the rule prohibiting multiplicity of suits. And the mere fact that the unlawful detainer suit was filed later than the one for damages does not change the situation of the parties (*Rosales v. CFI*, 154 SCRA 153 [1987]).

In these cases, it is evident that the first action was filed in anticipation of the filing of the later action and the purpose is to preempt the later suit or provide a basis for seeking the dismissal of the second action.

Even if this is not the purpose for the filing of the first action, it may nevertheless be dismissed if the later action is the more appropriate vehicle for the ventilation of the issues between the parties. Thus, in *Ramos v. Peralta*[10] it was held:

[T]he rule on *litis pendentia* does not require that the later case should yield to the earlier case. What is required merely is that there be another pending action, not a prior pending action. Considering the broader scope of inquiry involved in Civil Case No. 4102 and the location of the property involved, no error was committed by the lower court in deferring to the Bataan court's jurisdiction.

Given, therefore, the pendency of two actions, the following are the relevant considerations in determining which action should be dismissed: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.

In the case at bar, not only was petitioner's action in Civil Case No. 649 brought ahead of private respondent's action, it is also the appropriate case for determining the parties' rights. Petitioner's action (Civil Case No. 649) is for collection of a sum of money, whereas private respondent's action (Civil Case No. 7500) is simply for a statement of account apparently to enable it to pay its obligation to petitioner. Private respondent's claim is more in the nature of a defense to the action for collection. As such it should be asserted in Civil Case No. 649 rather than in a separate action.

However, there are countervailing considerations which make dismissal of Civil Case No. 7500 inequitable. These are the facts that a pre-trial conference has already been held and hearing has begun. If trial has not proceeded it was only because the records of the case were ordered elevated to the Court of Appeals. It would

therefore be more in keeping with the demands of equity if the cases are simply ordered consolidated so that evidence already presented in Civil Case No. 7500 will not have to be presented in Civil Case No. 649 again. As held in *Raymundo v. Felipe*:^[11]

The fact that [one case] was already partly tried on July 6, 1964, should not justify the refusal of the trial judge in consolidating the same with [the other case] because the evidence already submitted by the plaintiffs in the first case could be submitted as part of the evidence in the second case, without further need of retaking the testimonies of the witnesses, in view of the fact that both cases involve as hereinbefore stated the same parties, the same subject matter and the same issues. Pursuant to section 2, Rule 1 of the Revised Rules of Court, the rules of consolidation should be liberally construed to achieve the object of the parties in obtaining just, speedy and inexpensive determination of their cases.

Second. The Court of Appeals dismissed petitioner's action for certiorari on the ground that having filed its answer in Civil Case No. 7500, petitioner was estopped from later questioning the order denying its motion to dismiss the complaint. By necessity, petitioner had to file an answer inasmuch as its motion to dismiss was denied otherwise it would lay itself open to the possibility of being declared in default if it did not answer the complaint.^[12] The filing, therefore, of its answer is not a waiver of its right to question the denial of its motion to dismiss on certiorari.

The Court of Appeals also held that petitioner was guilty of laches and estoppel. Indeed, petitioner did not only file its answer in the RTC but also entered into trial and questioned the order denying its motion to dismiss only on September 14, 1985 $\frac{3}{4}$ more than three months after the trial had begun on May 28, 1985. Petitioner may simply have been forced to file its answer to avoid a declaration of default and to take part in the pre-trial conference on March 21, 1985. But it could have filed its petition for certiorari earlier. As it is, Allied Bank brought its action in the Court of Appeals only on September 14, 1985.

Nonetheless, we think that the pendency of two actions involving the same claim between the same parties is a sufficient justification for the belated action taken to resolve the intolerable situation. Otherwise, the possibility of two courts rendering conflicting rulings is not farfetched.

WHEREFORE, the decision dated August 31, 1990 of the Court of Appeals is REVERSED and Civil Case No. 7500, now pending before Branch 56 of the Regional Trial Court of Makati is ORDERED CONSOLIDATED with Civil Case No. 649 pending in Branch 136 of same court, the two cases to be heard and decided by the latter court.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.

[1] Per Associate Justice Alfredo M. Marigomen and concurred in by Associate Justices Josue N. Bellosillo and Filemon H. Mendoza.

[2] Petition, Annex B, Rollo, pp. 50-51.

[3] Petition, Annex H, Rollo, pp. 65-67.

[4] For its part private respondent moved to dismiss Civil Case No. 649 also on the ground of *litis pendentia*. But resolution of private respondent's motion to dismiss was deferred by Branch 136 for the reason that the ground (pendency of Civil Case No. 7500) was not indubitable. The court instead directed the parties to appear for a conference on May 3, 1985 and suspended the period to file private respondent's answer.

[5] Rule 16, §1(e).

[6] Arceo v. Oliveros, 134 SCRA 308 (1985).

[7] E.g., Sanpiro Finance Corporation v. Intermediate Appellate Court, 220 SCRA 527 (1993); Victronics Computers Inc. v. Logarta, 217 SCRA 517 (1993); Vda. de Tolentino v. De Guzman, 172 SCRA 555 (1989); Investors Finance Corporation v. Ebarle, 163 SCRA 61 (1988); Arceo v. Oliveros, 134 SCRA 308 (1985); Lamis Ents. v. Lagamon, 108 SCRA 746 (1981); Sta. Ana v. Narvades, 30 SCRA 454 (1969); Pampanga Bus Company, Inc. v. Ocfemia, 18 SCRA 407 (1966); Del Rosario v. Jacinto, 15 SCRA 15 (1968).

[8] 99 Phil. 150, 153 (1956); reiterated in Roa-Magsaysay v. Magsaysay, et al., 98 SCRA 592 (1980).

[9] 233 SCRA 86 (1994).

[10] 203 SCRA 412 (1991).

[11] 42 SCRA 615, 630 (1971). Accord, Vallacar Transit, Inc. v. Yap, 126 SCRA 500 (1983).

[12] Rule 16, §4; Rule 18, §1.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.