

CARLOS O. ELIDO, SR., PETITIONER, VS. COURT OF APPEALS AND THE OVERSEAS BANK OF MANILA (NOW COMMERCIAL BANK OF MANILA), RESPONDENTS.*G.R. No. 95441, December 16, 1992*

Ponente: BELLOSILLO, J.

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We are catching the tail-end of the string of cases visiting this Court as a result of the Resolutions[1] of the Central Bank of the Philippines suspending the banking operations of The Overseas Bank of Manila. However, unlike the other cases which squarely put at issue the validity of the bank's temporary closure, this is a simple collection case where the bank failed to collect from a debtor after its banking activities were provisionally suspended.

The records disclose that from 15 October 1964 to 25 February 1965, Allied Credit Integrated Services, Inc. (ALLIED, for brevity) obtained credit accommodations from private respondent, The Overseas Bank of Manila, later known as the Commercial Bank of Manila, and still later, the Boston Bank of the Philippines.[2] On 11 January 1965, to embody the terms of their undertaking in writing, ALLIED and private respondent entered into an Overdraft Agreement[3] allowing ALLIED to overdraw from its account deposited with The Overseas Bank of Manila such amounts not exceeding Ten Thousand Pesos (P10,000.00) at an annual interest rate of twelve percent (12%) compounded monthly. To secure ALLIED's prompt payment of any liability arising from the Overdraft Agreement, petitioner Carlos O. Elido, Sr., and one Vicente M. Gomez executed a Continuing Surety Agreement,[4] solidarily binding themselves up to the principal amount of Ten Thousand Pesos (P10,000.00), plus interest thereon at the rate stated in the Overdraft Agreement. Like the Overdraft Agreement, the Continuing Surety Agreement stipulates that ten percent (10%) of the amount due shall be paid by the debtor as attorney's fees in case a judicial proceeding is instituted to enforce the terms and conditions thereof.

By 23 March 1965, ALLIED had an existing overdraft of Nine Thousand Five Hundred Ninety-Eight Pesos and Seventy-Two Centavos (P9,598.72) which remained outstanding even after the Central Bank forbade it from doing business on 13 August 1968 upon finding respondent bank's financial condition to be extremely precarious.[5] On 23 October 1974, the Court approved the Program of Rehabilitation of The Overseas Bank of Manila submitted by both private respondent and the Central Bank,[6] Phase I of which provides, among others, for the collection of all loans already due and demandable.[7]

Hence, on 23 July 1976, after sending at least four (4) demand letters and still failing to collect, private respondent filed a collection case against ALLIED and petitioner Carlos O. Elido, Sr. By then, private respondent was already suing for P38,835.70 (P9,598.72 as principal overdraft and P29,236.98 as charges and accrued interest from 30 October 1964 to 30 June 1976).[8]

Meanwhile, Vicente M. Gomez died, hence, was no longer impleaded. ALLIED, which had ceased operations, was then dropped as co-defendant at the instance of private respondent as it could not be properly served with

summons and was already delaying the proceedings.

After some delay, which was rationalized by the possibility of an amicable settlement and the non--appearance of petitioner, the trial court allowed private respondent to present its evidence ex parte.[9]

Subsequently, on 18 April 1983, while moving to postpone the proceedings, petitioner "assumed and admitted the entire obligation as prayed for in the complaint." He then repeated his acknowledgment of the obligation in his motions for postponement filed 16 June 1983, 22 July 1983, 24 August 1983, and 14 September 1983. Finally, on 19 October 1983, the case was submitted for decision when petitioner could not wait for the judge to arrive at the scheduled hearing; instead, petitioner submitted a written manifestation[10] -

"I have admitted the obligation as prayed for in the complaint & assumed the loan & is (sic) waiving presentation of evidence for the defendants since I filed the postponement on September 13, 1983, stating that I will submit the case for decision in the event this case is not settled. Moreover, plaintiff had already presented and rested his case."

Thus, on 21 April 1986, after almost ten years from the time the case was instituted, the Regional Trial Court of Manila, Br. 7,[11] rendered its Decision pertinent portions of which read -

"Notwithstanding developments and circumstances aforesated, this case may now be decided on the basis of the virtual confession of judgment by defendant Atty. Carlos Elido, Sr., and the partial stipulation of facts filed by the parties.

"WHEREFORE, judgement is hereby rendered ordering defendant Carlos O. Elido, Sr. to pay plaintiff the sum of P38,835.70, with interest at 12% p.a. from July 1, 1976, compounded monthly, until said amount is fully paid, and 10% of the total amount due by virtue hereof as attorney's fee, and the costs."

From the foregoing judgment, petitioner appealed to the Court of Appeals. However, on 21 September 1990, respondent appellate court,[12] finding no reversible error, affirmed in toto the Decision appealed from.

In this petition for review on certiorari of the decision of respondent Court of Appeals, petitioner imputes the following errors to respondent appellate court: (a) in not declaring that private respondent's complaint instituted 23 July 1976 was filed more than eleven (11) years from the time the agreement was executed on 11 January 1965, hence, already barred by the statute of limitations and/or laches which provides for a prescriptive period of only ten (10) years; (b) in declaring him liable to private respondent in the sum of P38,835.70 with annual interest of twelve percent (12%) compounded monthly from 1 July 1976 until fully paid, contrary to their Continuing Surety Agreement specifically limiting his liability to Ten Thousand Pesos (P10,000.00) only; and, (c) in ordering petitioner to pay private respondent ten percent (10%) for attorney's fees despite the fact that its counsel merely presented its evidence ex parte.

In his Reply, petitioner questions for the first time the non-joinder of the real parties in interest, i.e., the Commercial Bank of Manila and/or the Boston Bank of the Philippines as successive transferees of the rights of private respondent, while the case was before respondent appellate court which, as a consequence, divested respondent appellate court of jurisdiction over the case.

Private respondent bank, on the other hand, counters that the unequivocal admission and assumption of the obligation by petitioner totally negates the latter's claim of prescription and/or laches; hence, petitioner is estopped from questioning the propriety of the decision of the lower court. Private respondent further argues that the period during which its banking operations were suspended should not be taken against it as it was then practically prevented from enforcing its rights under their Overdraft Agreement and Continuing Surety Agreement, and that the demand letters of 7 June 1966, 1 March 1976, 12 March 1976, and 19 March 1976 sent to

ALLIED caused the full period of prescription to run anew.

On petitioner's contention that his liability is limited only to Ten Thousand Pesos (P10,000.00), private respondent submits that the twelve percent (12%) interest on the principal overdraft and the additional ten percent (10%) of the amount due as attorney's fees, both granted by the trial court, were expressly stipulated in both agreements.

Finally, in response to the Reply of petitioner that respondent court has lost jurisdiction over the case on the ground of non-joinder of real parties in interest, private respondent maintains that respondent appellate court never lost jurisdiction as there was no transfer of interest to speak of, and that private respondent merely changed its name from The Overseas Bank of Manila to Commercial Bank of the Philippines, and then to Boston Bank of the Philippines. It was never dissolved. Besides, petitioner was well aware of the change of name of private respondent, as evidenced by the various pleadings he filed in the appellate court wherein he never assailed the change. Verily, he cannot at this late stage raise the matter for the first time. Jurisprudence has settled against petitioner the issues raised by him; consequently, his petition must fail.

Petitioner's defense of prescription is untenable. He seeks refuge in Art. 1144 (1)[13] of the Civil Code, which however provides that the cause of action must be brought within ten (10) years from the time the cause of action accrues. Thus, in a number of cases,[14] We held -

"Since a 'cause of action' requires as essential elements, not only a legal right of the plaintiff and a correlative obligation of the defendant but also 'an act or omission of the defendant in violation of said legal right,' the cause of action does not accrue until the party obligated refuses, expressly or impliedly, to comply with its duty."

Also, in two (2) other cases,[15] We ruled -

"A cause of action has three elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen. Translated in terms of hypothetical situation regarding a written contract, no cause of action arises until there is breach or violation thereof by either party. It is not, therefore, from the date of the instrument but from the date of the breach that the period of prescription of the action starts."

In the case before Us, private respondent attached to its appellee's brief filed with the court below copies of its demand letters of 7 June 1966, 1, 12 and 19 March 1976 all addressed to petitioner, apparently to show the interruption of the ten-year prescriptive period. Petitioner however prays that We disregard the demand letters because of their dubious authenticity as they were not allegedly presented in the court below.

But this does not put petitioner in a better position. For, even if We disregard the various demands (anyway, no evidence was adduced as to when they were received), this could only mean that the prescriptive period never commenced to run since there was no point in time when petitioner could have refused to pay, or committed a breach, until the judicial demand on 23 July 1976 which, incidentally, also suspended the running of the period. This must be so as the Overdraft Agreement stipulates that the obligation shall be payable upon demand, while the Continuing Surety Agreement, being a supplemental agreement, merely provides that the obligation shall become due upon maturity, with or without demand. Hence, it is only from this judicial demand that the cause of action accrued, and not from 11 January 1966, the date the Overdraft Agreement and the Continuing Surety Agreement were executed. Besides, even assuming that the action on the debt is already barred by the statute of limitations,

this cannot prevent the debtor from recognizing and confessing judgment upon it, which was what petitioner did in fact.

The contention of petitioner that his obligation is limited only to Ten Thousand Pesos (P10,000.00) is untenable. The Continuing Surety Agreement expressly provides ?

"[t]he liability of the SURETY shall not at anytime exceed the sum of TEN THOUSAND ONLY * * * * * Pesos (P10,000.00) Philippine Currency, plus the interest thereon at the rate or rates stated in the obligations secured hereby, and the cost and expenses the CREDITOR incurred in the granting of the credits, loans, overdrafts x x x x (underscoring ours),"[16]

while the Overdraft Agreement, which in fact is the principal agreement, reads ?

"Any and all advances and payments made by the BANK to the CLIENT hereunder, in whatever form made or allowed shall bear interest at the rate of twelve per centum (12%) per annum, upon daily balances as shown by the books of the BANK, which interest shall be payable monthly on the day of each month, or at the option of the BANK, the amount thereof shall be debited to the account of the CLIENT. Interest debited to the account of the CLIENT shall thereupon become part, of the principal due from the CLIENT and shall draw interest at the same rate (underscoring ours)."[17]

Both agreements likewise expressly state that in the event judicial proceedings are instituted for the recovery of any amount due thereunder, the client and/or the surety, as the case may be, shall pay the bank attorney's fees and the costs of collection which shall not be less than ten percent (10%) of the total amount due.[18] From the provisions of the agreements, it is thus crystal clear that while the liability of the surety may be limited to the principal overdraft of Ten Thousand Pesos (P10,000.00), his obligation extends to the interests borne by the principal loan and the attorney's fees he may be liable for. These are the provisions of the contract between the parties which must be respected as the contract is the law between them.[19]

Petitioner's submission that respondent appellate court lost jurisdiction over the case by reason of non-joinder of real parties in interest deserves scant consideration. We have already said in *Jocson v. Court of Appeals*[20] that -

"This Court has declared in a number of decisions that a transferee pendente lite stands in exactly the same position as its predecessor-in-interest, the original defendant, and is bound by the proceedings had in the case before the property was transferred to it. It is a proper but not an indispensable party as it would in any event be bound by the judgment against his predecessor. This would follow even if it is not formally included as a defendant through an amendment of the complaint."

Moreover, this argument must outrightly be rejected as it was never brought to the attention of the trial court nor averred before respondent appellate court. Well settled is the rule that issues not raised in the trial court, let alone in the Court of Appeals, cannot be raised for the first time before this Court.[21]

Upon the other hand, petitioner seriously jeopardized his cause when he made a virtual confession of judgment. In fine, had We opted to, We could have easily disposed of this petition on this ground, and immediately upon filing at that, for it is elementary that judgment may be rendered for either the plaintiff or the defendant on a clear and unequivocal admission of liability in the pleadings of the opposing party.[22] Hence, where the defendant in his pleadings admits and assumes the entire obligation as prayed for in the complaint, plaintiff is entitled to have judgment entered in accordance with such admission, provided the admission is distinct, unequivocal and unconditional.

We realize the implications of Our decision, considering that respondent bank will be allowed to collect accrued interests corresponding to the period when its operations were suspended by the Central Bank. But, this is inevitable. We cannot stamp Our imprimatur on petitioner's enjoyment of an interest-free loan in derogation of

the express provisions of the Continuing Surety Agreement he freely and voluntarily entered into with private respondent. To rule otherwise would be violative of the clear terms of the agreement of the parties, and would only exacerbate the already critical financial plight of respondent bank.

WHEREFORE, finding no reversible error committed by respondent Court of Appeals, the instant petition is DISMISSED. Costs against petitioner.

SO ORDERED.

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

[1] Monetary Board Resolution No. 1263 issued 31 July 1968 excluding The Overseas Bank of Manila from inter-banking clearing; Central Bank Resolution No. 1290 issued 1 August 1968 suspending the operations of The Overseas Bank of Manila; and, Central Bank Resolution No. 1333 issued 13 August 1968 completely forbidding The Overseas Bank of Manila from doing business preparatory to its forcible liquidation.

[2] As of 25 July 1991.

[3] Complaint, Annex "A".

[4] Complaint, Annex "B".

[5] See *Ramos v. Central Bank of the Phil.*, No. L-29352, 4 October 1971, 41 SCRA 565, for the chronology of events.

[6] *Ramos v. Central Bank of the Phil.*, No. L-29352, 23 October 1974; 60 SCRA 276.

[7] Rehabilitation Plan of The Overseas Bank of Manila, Phase I, 1.1.

[8] See Complaint, Annex "C".

[9] Order, 28 October 1982.

[10] Records, Regional Trial Court, p. 190.

[11] Penned by Judge Amante P. Purisima.

[12] Fourteenth Division; Decision penned by Justice Arturo B. Buena, Chairman, concurred in by Justices Nicolas P. Lapeña, Jr., and Fortunato A. Vailoces.

[13] Art. 1144. The following actions must be brought within ten years from the time the cause of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; (3) Upon a judgment.

[14] *Ma-ao Sugar Central Co. v. Barrios*, 79 Phil. 666 (1947); *ACCFA v. Alpha Insurance and Surety Co., Inc.*, No. L-24566, 29 July 1968, 24 SCRA 151; *Summit Guaranty and Insurance Co., Inc. v. De Guzman*, G.R. No. 50997, 30 June 1987, 151 SCRA 389; *Young v. CA*, G.R. No. 83271, 8 May 1991, 196 SCRA 795.

[15] *Cole v. Vda. de Gregorio*, G.R. No. 55315, 21 September 1982, 116 SCRA 670, and *Nabus v. CA*, G.R. No. 91670, 7 February 1991, 193 SCRA 732.

[16] Continuing Surety Agreement, par. 3.

[17] Overdraft Agreement, par. 4 (D).

[18] Continuing Surety Agreement, par. 9, and Overdraft Agreement, par. 4 (I).

[19] *Samhwa v. IAC*, G.R. No. 74305, 31 January 1992; 205 SCRA 632.

[20] G.R. No. 88297, 22 March 1990; 183 SCRA 589, 592.

[21] *Rosales v. CA*, G.R. No. 95697, 5 August 1991, 200 SCRA 300; *BA Finance v. CA*, G.R. No. 82040, 27 August 1991, 201 SCRA 157; *Republic Resources and Development Corp. v. CA*, G.R. No. 33438, 28 October 1991, 203 SCRA 164; and other related cases.

[22] 49 C.J.S. 321.

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