

OUANO ARRASTRE SERVICE, INC., PETITIONER, VS. THE HON. PEARY G. ALEONAR, PRESIDING JUDGE, REGIONAL TRIAL COURT OF CEBU, BRANCH XXI AND INTERNATIONAL PHARMACEUTICALS, INC., AND T...

G.R. No. 97664. October 10, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

Private respondent International Pharmaceuticals, Inc. ("IPI") filed a complaint before the Regional Trial Court of Cebu City against Mercantile Insurance Company, Inc. ("Mercantile") and petitioner Ouano Arrastre Service, Inc. ("OASI") for replacement of certain equipment imported by IPI which were insured by Mercantile but were lost on arrival in Cebu City, allegedly because of mishandling by petitioner OASI.

Petitioner OASI's answer was filed by the law firm of Ledesma, Saludo and Associates ("LSA") and signed by Atty. Manuel Trinidad of the Cebu office or branch of LSA. However, sometime thereafter, Atty. Trinidad resigned from LSA and Atty. Fidel Manalo, a partner from the Makati office of LSA, filed a motion to postpone the hearing stating that the case had just been endorsed to him by petitioner OASI.

On 12 January 1990, after trial which Atty. Manalo handled for OASI, the trial court rendered a decision holding Mercantile and petitioner OASI jointly and severally liable for the cost of replacement of the damaged equipment plus damages, totaling P435,000.00.

Only Mercantile appealed from the decision.

On 19 June 1990, IPI filed a motion for execution of the decision against petitioner OASI which public respondent judge granted on 25 June 1990.

On 26 June 1990 petitioner's counsel, through Atty. Catipay of the Cebu Branch of the LSA, filed a notice of appeal^[1] claiming that the decision was "mistakenly sent" by the trial court to the law firm's Head Office in Makati.^[2]

On 27 June 1990, petitioner, through the same counsel, filed a motion for reconsideration of the order granting the writ of execution alleging that: (1) the failure seasonably to file an appeal was due to excusable neglect and slight "oversight"^[3] claiming that there was miscommunication between LSA-Cebu and LSA main office as to who would file the notice of appeal; and (2) Mercantile's timely notice of appeal should benefit petitioner OASI, a solidary co-debtor.

On 2 July 1990, public respondent judge denied OASI's motion for reconsideration declaring that the appeal cannot be given due course for lack of merit and ordered that the writ of execution be enforced.

On appeal, the Court of Appeals dismissed petitioner's appeal upon the grounds that: (1) there had been a valid service of the decision; (2) the decision had become final and executory as to petitioner OASI; and (3)

Mercantile's appeal does not inure to the benefit of petitioner as they do not share common defenses.

Petitioner is now before this Court alleging that:

1. the honorable Court of Appeals has decided a question of substance not theretofore determined by the Supreme Court when the former affirmed the trial court's ruling that the undisputed timely appeal made by co-defendant Mercantile Insurance, Co., Inc., the co-solidary judgment debtor of petitioner herein, does not inure to the latter's benefit, notwithstanding such ruling's resultant legal and procedural "complexities" or "absurdities;"
2. the honorable Court of Appeals' questioned decision is contrary to law and the applicable decisions of the Supreme Court because its ruling that the undisputed timely appeal taken by Mercantile Insurance does not inure to the benefit of petitioner, on the ground that they do not share common defenses, is contrary to the provision of Article 1222 of the Civil Code of the Philippines;
3. the honorable Court of Appeals' questioned decision is contrary to law and the applicable decisions of the Supreme Court since Petitioner's Notice of Appeal was filed on time, considering that the period to take an appeal had not commenced to run, there having been a defective service to the petitioner of the copy of the trial court's Decision; and
4. granting without admitting that petitioner's appeal was filed out of time, the Court of Appeals' questioned decision is still contrary to law and the applicable decisions of the Supreme Court because it strictly applied a procedural technicality over matters relating to substantial justice and equity, disregarding thereby Section 2, Rule 1 of the Rules of Court and the extensive jurisprudence on the matter.

The issues in the present petition may be summarized as follows:

1. Whether or not there was valid service of the decision of the trial court upon petitioner's counsel; and
2. Whether or not the seasonable appeal filed by petitioner's co-defendant Mercantile should stay the execution as against petitioner.

Deliberating on the instant petition for review, the Court believes that petitioner has failed to show reversible error on the part of the Court of Appeals ("CA") in rendering its Decision dated 10 January 1991.

The Court is not persuaded by the contention that the period to file a notice of appeal had not commenced to run as there had been no valid service of the trial court's decision upon petitioner's counsel. The Court of Appeals found as a fact that a copy of the decision was served upon Atty. Catipay but that he refused to receive it:

"Finally, on this point, there is an uncontroverted sworn statement of the lower court's legal aide, Mr. Jesus A. Lim, attesting to the fact that on February 7, 1990 he served on Atty. Ronald Catipay a copy of the decision in the case, but that the latter 'refused to receive copy of the decision and instead instructed me to send the copy of the decision to the Makati Office of the law firm' and that Mr. Lim accompanied the lawyer to a place where a xerox machine was located, copied the decision and gave to the lawyer a xerox copy of said decision. This statement seems to find corroboration in the later allegation of Atty. Catipay that their Cebu office never 'officially' received copy of the decision."

There was no justification for Atty. Catipay of LSA-Cebu to refuse the service, especially if, as petitioner now alleges, the notice should have been sent to LSA-Cebu on the theory that Atty. Catipay was the lead counsel.

Petitioner's counsel was and is the firm of Ledesma, Saludo and Associates (and not any particular member or associate of that firm) which firm happens to have a main office in Makati and a branch office in Cebu City. The Court notes that both the main and branch offices operate under one and the same name, Saludo Ledesma and Associates. Having represented itself to the public as comprising a single firm, LSA should not be allowed at this

point to pretend that its main office and its branch office in effect constitute separate law firms with separate and distinct personalities and responsibilities.

Petitioner does not deny that Atty. Manalo, a partner in LSA based in its Makati main office, received the copy of the decision. Such a receipt binds the LSA law partnership.[4]

The cases cited by petitioner will afford it no comfort. The case of *Magpayo v. Court of Appeals*,[5] involved an invalid substitution of counsel; in the present case, there never was any substitution of counsel as petitioner's counsel remained the law firm known as Ledesma, Saludo and Associates and that firm only, but that firm as a whole. Neither would *Phil. Suburban Development Corporation v. Court of Appeals*,[6] apply as said case involved a notice addressed to the lawyer but sent to a wrong address; in the present case, the Cebu and Makati addresses of Ledesma, Saludo and Associates were both correct addresses.

The Court also finds no merit in the claim that the affidavit of Mr. Jesus Lim, which, as already noted, stated that Atty. Catipay refused to accept a copy served upon him and instead instructed that a copy be sent to the Makati office, had been given undue weight by the Court of Appeals. Petitioner claims that the Court of Appeals should have relied more on the written admission that a copy was served on LSA-Makati on 21 February 1991. Petitioner cites *Domingo v De Leon*,[7] where it was held that, as proof of service, an affidavit comes second only to written admission by the party. But that statement was made in *Domingo* because there was an inconsistency there between the admission of the party and the affidavit. There is no such inconsistency in the present case. Rather, the affidavit in the present case tends to explain why the copy of the trial court's decision had to be sent to the Makati office.

The trial court's decision was validly served upon petitioner's counsel, whether we look to the unjustified refusal by Atty. Catipay of LSA-Cebu to accept a copy of the trial court's decision on 7 February 1990 and the actual notice received by Atty. Catipay on that date through his acquisition of a photocopy of that decision, or whether we look to the receipt of the trial court's decision by LSA Makati on 21 February 1990. In view of the unitary nature of the law firm retained by petitioner as its counsel, we believe that the reglementary period for filing a notice of appeal actually began to run on 8 February 1990. However, even if the Court were to accept (which it does not) the supposition that the reglementary period began to run only on 22 February 1990, the day after the copy of the trial court's decision was received by LSA-Makati, it is quite clear that the notice of appeal filed by petitioner's counsel on 26 June 1990 was wholly late. By the time the notice of appeal was filed, the trial court's decision had become final and executory as to petitioner and could be executed against it.

Petitioner complains that an immediate execution, pending Mercantile's appeal, would result in "complexities" if the Court of Appeals were to absolve Mercantile of its liabilities, that petitioner would have no recourse against its solidary co-debtor and would in effect be held the only one liable under the trial court's judgment.

If that were to happen, petitioner has only itself to blame. It allowed the period for appeal to lapse without appealing. Article 1216 of the Civil Code provides that "[T]he creditor may proceed against any one of the solidary debtor or some or all of them simultaneously." Thus IPI, as solidary creditor, has the right to enforce the trial court's decision against petitioner OASI.

Petitioner also argues that under Article 1222 of the Civil Code a solidary co-debtor can raise the defenses personal to his co-debtor and that, therefore, petitioner OASI should be exempt from paying the portion of the judgment corresponding to Mercantile. This is not the first time this argument has been presented to this Court. In *Citytrust Banking Corporation v. 4th Division, Court of Appeals*,[8] the Court rejected a similar claim made to delay execution of a trial court's decision. There the Court held that:

"With respect to the issue of whether or not private respondent is entitled to 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 'execution 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 of 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 petitioner to the effect that execution should not be allowed during the pendency of 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 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." (Italics supplied)[9]

Moreover petitioner argues that defenses personal to co-debtors are available to the other co-debtor because "The rights and liabilities of the parties are so 'interwoven and dependent on each other, as to be inseparable.'"[10] The case cited by petitioner would not change the situation, since it cannot be said that petitioner OASI's defenses are similar to, let alone "dependent on" and "inseparable from," the defenses of Mercantile. In *Citytrust Banking Corporation v 4[th] Division, Court of Appeals* (supra) the Court held that for the rights and liabilities to be "interwoven" their defenses must be "similar":

"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 manner that their defenses are similar and that a reversal of the judgment in one should operate as a reversal to the other." (Italics supplied)[11]

Petitioner's and Mercantile's defenses actually conflict with each other. Petitioner claims that the goods were received by it from the carrier vessel in bad condition; Mercantile, on the other hand, maintains that the goods did not sustain any damage or loss, during the voyage. Moreover, Mercantile claims that, in any case, the insurance contract with IPI had already lapsed, a defense which petitioner, as the arrastre company responsible for the damage, cannot invoke to avoid liability. Finally, by failing to appeal, petitioner effectively waived any right it might have had to assert, as against the judgment creditor, any defense pertaining to Mercantile. In other words, petitioner by its own act or inaction, is no longer in a position to benefit from the provisions of Article 1222 of the Civil Code.

In fine, the trial court's judgment can now be enforced against petitioner OASI. We do not pass upon — because there is no necessity to do so — the question of whether or not, or under what circumstances, petitioner if made to pay the whole amount of IPI's claim, may recover any contribution from Mercantile in a separate action.

ACCORDINGLY, the Petition for Review is hereby DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[*] Petitioner failed to include the Court of Appeals in the caption of the present petition, though a copy of the petition was furnished the Court of Appeals.

[1] Rollo, p. 5, Petition p. 4.

[2] Id., p. 52.

[3] Rollo, p. 131.

[4] Article 1818, Civil Code.

[5] 61 SCRA 115 (1974).

[6] 100 SCRA 109 (1980).

[7] 3 SCRA 586 (1961).

[8] 171 SCRA 758 (1989).

[9] Citytrust Banking Corporation v. 4th Division, Court of Appeals, 171 SCRA at 766-767.

[10] Tropical Homes, Inc. v Fortun, 169 SCRA 81 (1989).

[11] Citytrust Banking Corporation v. 4th Division, Court of Appeals, 171 SCRA at 765.

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