764 Phil. 576

FIRST DIVISION

[G.R. No. 201892, July 22, 2015]

NORLINDA S. MARILAG, PETITIONER, VS. MARCELINO B. MARTINEZ, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 4, 2011 and the Resolution[3] dated May 14, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 81258 which recalled and set aside the Orders dated November 3, 2003[4] and January 14, 2004[5] of the Regional Trial Court (RTC) of Las Piñas City, Branch 202 (court *a quo*) in Civil Case No. 98-0156, and reinstated the Decision[6] dated August 28, 2003 directing petitioner Norlinda S. Marilag (petitioner) to return to respondent Marcelino B. Martinez (respondent) the latter's excess payment, plus interest, and to pay attorney's fees and the costs of suit.

The Facts

On July 30, 1992, Rafael Martinez (Rafael), respondent's father, obtained from petitioner a loan in the amount of P160,000.00, with a stipulated monthly interest of five percent (5%), payable within a period of six (6) months. The loan was secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-208400. Rafael failed to settle his obligation upon maturity and despite repeated demands, prompting petitioner to file a Complaint for Judicial Foreclosure of Real Estate Mortgage before the RTC of Imus, Cavite, Branch 90[7] (RTC-Imus) on November 10, 1995,[8] docketed as Civil Case No. 1208-95 Gudicial foreclosure case).

Rafael failed to file his answer and, upon petitioner's motion, was declared in default. After an *ex parte* presentation of petitioner's evidence, the RTC-Imus issued a Decision[9] dated January 30, 1998, (January 30, 1998 Decision) in the foreclosure case, declaring the stipulated 5% monthly interest to be usurious and reducing the same to 12% per annum (p.a.). Accordingly, it ordered Rafael to pay petitioner the amount of P229,200.00, consisting of the principal of P160,000.00 and accrued interest of P59,200.00 from July 30, 1992 to September 30, 1995.[10] Records do not show that this Decision had already attained finality.

Meanwhile, prior to Rafael's notice of the above decision, respondent agreed to pay Rafael's obligation to petitioner which was pegged at P689,000.00. After making a total payment of P400,000.00,[11] he executed a promissory note[12] dated February 20, 1998 (subject PN), binding himself to pay on or before March 31, 1998 the amount of P289,000.00, "representing the balance of the agreed financial

obligation of [his] father to [petitioner]."[13] After learning of the January 30, 1998 Decision, respondent refused to pay the amount covered by the subject PN despite demands, prompting petitioner to file a complaint[14] for sum of money and damages before the court *a quo* on July 2, 1998, docketed as Civil Case No. 98-0156 (collection case).

Respondent filed his answer,[15] contending that petitioner has no cause of action against him. He averred that he has fully settled Rafael's obligation and that he committed a mistake in paying more than the amount due under the loan, *i.e.*, the amount of P229,200.00 as adjudged by the RTC-Imus in the judicial foreclosure case which, thus, warranted the return of the excess payment. He therefore prayed for the dismissal of the complaint, and interposed a compulsory counterclaim for the release of the mortgage, the return of the excess payment, and the payment of moral and exemplary damages, attorney's fees and litigation expenses.[16]

The Court A Quo's Ruling

In a Decision[17] dated August 28, 2003 (August 28, 2003 Decision), the court *a quo* denied recovery on the subject PN. It found that the consideration for its execution was Rafael's indebtedness to petitioner, the extinguishment of which necessarily results in the consequent extinguishment of the cause therefor. Considering that the RTC-Imus had adjudged Rafael liable to petitioner only for the amount of P229,200.00, for which a total of P400,000.00 had already been paid, the court *a quo* found no valid or compelling reason to allow petitioner to recover further on the subject PN. There being an excess payment of P171,000.00, it declared that a quasi-contract (in the concept of *solutio indebiti*) exists between the parties and, accordingly, directed petitioner to return the said amount to respondent, plus 6% interest p.a.[18] reckoned from the date of judicial demand[19] on August 6, 1998 until fully paid, and to pay attorney's fees and the costs of suit.[20]

In an Order[21] dated November 3, 2003 (November 3, 2003 Order), however, the court *a quo* granted petitioner's motion for reconsideration, and recalled and set aside its August 28, 2003 Decision. It declared that the causes of action in the collection and foreclosure cases are distinct, and respondent's failure to comply with his obligation under the subject PN justifies petitioner to seek judicial relief. It further opined that the stipulated 5% monthly interest is no longer usurious and is binding on respondent considering the suspension of the Usury Law pursuant to Central Bank Circular 905, series of 1982. Accordingly, it directed respondent to pay the amount of P289,000.00 due under the subject PN, plus interest at the legal rate reckoned from the last extra-judicial demand on May 15, 1998, until fully paid, as well as attorney's fees and the costs of suit.[22]

Aggrieved, respondent filed a motion for reconsideration[23] which was denied in an Order[24] dated January 14, 2004, prompting him to elevate the matter to the CA.[25]

The CA Ruling

In a Decision[26] dated November 4, 2011, the CA recalled and set aside the court *a*

quo's November 3, 2003 and January 14, 2004 Orders, and reinstated the August 28, 2003 Decision. It held that the doctrine of *res judicata* finds application in the instant case,[27] considering that both the judicial foreclosure and collection cases were filed as a consequence of the non-payment ofRafael's loan, which was the principal obligation secured by the real estate mortgage and the primary consideration for the execution of the subject PN. Since *res judicata* only requires substantial, not actual, identity of causes of action and/or identity of issue,[28] it ruled that the judgment in the judicial foreclosure case relating to Rafael's obligation to petitioner is final and conclusive on the collection case.

Petitioner's motion for reconsideration was denied in a Resolution[29] dated May 14, 2012; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the dismissal of the collection case.

The Court's Ruling

The petition lacks merit.

A case is barred by prior judgment or *res judicata* when the following elements concur: (*a*) the judgment sought to bar the new action must be ***final***; (*b*) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (*c*) the disposition of the case must be a judgment on the merits; and (*d*) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[30]

After a punctilious review of the records, the Court finds the principle of *res judicata* to be inapplicable to the present case. This is because the records are bereft of any indication that the August 28, 2003 Decision in the judicial foreclosure case had already attained finality, evidenced, for instance, by a copy of the entry of judgment in the said case. Accordingly, with the very first element of *res judicata* missing, said principle cannot be made to obtain.

This notwithstanding, the Court holds that petitioner's prosecution of the collection case was barred, instead, by the principle of *litis pendentia* in view of the substantial identity of parties and singularity of the causes of action in the foreclosure and collection cases, such that the prior foreclosure case barred petitioner's recourse to the subsequent collection case.

To lay down the basics, ***litis pendentia*, as a ground for the dismissal of a civil action, refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious**. For the bar of *litis pendentia* to be invoked, the following requisites must concur: (*a*) identity of parties, or at least such parties as represent the same interests in both actions; (*b*) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (*c*) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res*

judicata in the other.[31] The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits.[32] Consequently, a party will not be permitted to split up a single cause of action and make it a basis for several suits as the whole cause must be determined in one action.[33] **To be sure, splitting a cause of action is a mode of forum shopping by filing multiple cases based on the same cause of action, but with different prayers, where the round of dismissal is *litis pendentia* for *res judicata*, as the case may be).**[34]

In this relation, it must be noted that the question of whether a cause of action is single and entire *or* separate is not always easy to determine and the same must often be resolved, not by the general rules, but by reference to the facts and circumstances of the particular case. The true rule, therefore, is **whether the entire amount arises from one and the same act or contract which must, thus, be sued for in one action, *or* the several parts arise from distinct and different acts or contracts, for which a party may maintain separate suits**.[35]

In loan contracts secured by a real estate mortgage, the rule is that the creditor-mortgagee has a **single cause of action** against the debtor mortgagor, *i.e.*, **to recover the debt**, through the **filing of a personal action for collection of sum of money *or* the institution of a real action to foreclose on the mortgage security**. The two remedies are **alternative**,[36] not cumulative or successive,[37] and each remedy is complete by itself. Thus, if the creditor-mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the unpaid debt,[38] ***except only*** for the recovery of whatever deficiency may remain in the outstanding obligation of the debtor-mortgagor **after deducting the bid price in the public auction sale of the mortgaged properties**.[39] Accordingly, a deficiency judgment shall only issue after it is established that the mortgaged property was sold at public auction for an amount less than the outstanding obligation.

In the present case, records show that petitioner, as creditor mortgagee, instituted an action for judicial foreclosure pursuant to the provisions of Rule 68 of the Rules of Court in order to recover on Rafael's debt. In light of the foregoing discussion, the availment of such remedy thus bars recourse to the subsequent filing of a personal action for collection of **the same debt**, in this case, under the principle of *litis pendentia*, considering that the foreclosure case only remains pending as it was not shown to have attained finality.

While the ensuing collection case was anchored on the promissory note executed by respondent who was not the original debtor, the same does not constitute a separate and distinct contract of loan which would have given rise to a separate cause of action upon breach. Notably, records are bereft of any indication that respondent's agreement to pay Rafael's loan obligation and the execution of the subject PN extinguished by novation[40] the contract of loan between Rafael and

petitioner, in the absence of express agreement or any act of equal import. Well-settled is the rule that novation is never presumed, but must be clearly and unequivocally shown. Thus, in order for a new agreement to supersede the old one, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one,[41] which was not shown here.

On the contrary, it is significant to point out that: (*a*) the consideration for the subject PN was the same consideration that supported the original loan obligation of Rafael; (*b*) respondent merely assumed to pay Rafael's remaining unpaid balance in the latter's behalf, *i.e.*, as Rafael's agent or representative;[42] and (*c*) the subject PN was executed after respondent had assumed to pay Rafael's obligation and made several payments thereon. Case law states that the fact that the creditor accepts payments from a third person, who has assumed the obligation, will result merely in the addition of debtors, not novation, and the creditor may enforce the obligation against both debtors.[43] For ready reference, the subject PN reads in full:

> February 20, 1998
>
> PROMISSORY NOTE
>
> P289,000.00
>
> I, MARCELINO B. MARTINEZ, son of Mr. RAFAEL MARTINEZ, of legal age, Filipino, married and a resident of No. 091 Anabu I-A, Imus, Cavite, by these presents do hereby specifically and categorically PROMISE, UNDERTAKE and bind myself **in behalf of my father**, to pay to Miss NORLINDA S. MARILAG, Mortgagee-Creditor of my said father, the sum of TWO HUNDRED EIGHTY NINE THOUSAND PESOS (P289,000.00), Philippine Currency, on or before MARCH 31, 1998, **representing the balance of the agreed financial obligation of my said father to her**. (Emphases supplied)
>
> Executed at Pamplona I, Las Piñas City, Metro Manila, this 20th day of February, 1998.
>
> Sgd.
> MARCELINO B. MARTINEZ
> Promissor[44]

Petitioner's contention that the judicial foreclosure and collection cases enforce independent rights[45] must, therefore, fail because the Deed of Real Estate Mortgage[46] and the subject PN both refer to one and the same obligation, *i.e.*, Rafael's loan obligation. As such, there exists ***only one cause of action*** for a single breach of that obligation. Petitioner cannot split her cause of action on Rafael's unpaid loan obligation by filing a petition for the judicial foreclosure of the real estate mortgage covering the said loan, and, thereafter, a personal action for the collection of the unpaid balance of said obligation not comprising a deficiency arising from foreclosure, without violating the proscription against splitting a single cause of action, where the ground for dismissal is either *res judicata* or *litis pendentia*, as in this case.