

THIRD DIVISION

[G.R. No. 173331, December 11, 2013]

FLORPINA BENAVIDEZ PETITIONER VS. NESTOR SALVADOR RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* assailing the November 22, 2005 Decision^[1] and the June 8, 2006 Amended Decision^[2] of the Court of Appeals (CA), in CA-G.R. CV No. 73487, which affirmed and modified the June 1, 2001 Decision^[3] of the Regional Trial Court, Branch 74, Antipolo City (*RTC-Antipolo*) in Civil Case No. 00-5660.

The Facts:

Sometime in February 1998, petitioner Florpina Benavidez (*Benavidez*) approached and asked respondent Nestor Salvador (*Salvador*) for a loan that she would use to repurchase her property in Tanay, Rizal which was foreclosed by the Farmers Savings and Loan Bank, Inc. (*Farmers Savings*). After inspecting the said property, Salvador agreed to lend the money subject to certain conditions. To secure the loan, Benavidez was required to execute a real estate mortgage, a promissory note and a deed of sale. She was also required to submit a special power of attorney (*SPA*) executed and signed by Benavidez's daughter, Florence B. Baning (*Baning*), whom she named as the vendee in the deed of absolute sale of the repurchased property. In the SPA, Baning would authorize her mother to obtain a loan and to constitute the said property as security of her indebtedness to Salvador.

Pursuant to the agreement, Salvador issued a manager's check in favor of Benavidez in the amount of One Million Pesos (P1,000,000.00) and released Five Hundred Thousand Pesos (P500,000.00) in cash. For the loan obtained, Benavidez executed a promissory note, dated March 11, 1998.

Benavidez, however, failed to deliver the required SPA. She also defaulted in her obligation under the promissory note. All the postdated checks which she had issued to pay for the interests were dishonored. This development prompted Salvador to send a demand letter with a corresponding statement of account, dated January 11, 2000. Unfortunately, the demand fell on deaf ears which constrained Salvador to file a complaint for sum of money with damages with prayer for issuance of preliminary attachment.

On May 4, 2000, Benavidez filed a motion to dismiss on the ground of *litis pendentia*. She averred that prior to the filing of the case before the RTC-Antipolo, she had filed a *Complaint for Collection for Sum of Money, Annulment of Contract and Checks with Prayer for Preliminary Injunction and Temporary Restraining Order*

against Salvador; his counsel, Atty. Nepthalie Segarra; Almar Danguilan; and Cris Marcelino, before the Regional Trial Court, Branch 80, Morong, Rizal (*RTC-Morong*). The motion to dismiss, however, was denied by RTC-Antipolo on July 31, 2000. On September 15, 2000, Benavidez filed her answer with counterclaim. A pre-trial conference was scheduled on May 2, 2001 but she and her counsel failed to appear despite due notice. Resultantly, upon motion, Salvador was allowed by the trial court to present evidence *ex parte*.

On June 1, 2001, RTC-Antipolo decided the subject case for Salvador. It found that indeed Benavidez obtained a loan from Salvador in the amount of P1,500,000.00. It also noted that up to the time of the rendition of the judgment, she had failed to settle her obligation despite having received oral and written demands from Salvador. Also, the trial court pointed out that the evidence had shown that as of January 11, 2000, Benavidez's obligation had already reached the total amount of P4,810,703.21.^[4] Thus, the *fallo* of the said decision reads:

WHEREFORE, in view of the foregoing premises, defendant is hereby directed to pay plaintiff the following:

1. The amount of P4,810,703.21, covering the period from June 11, 1998 to January 11, 2000, exclusive of interest and penalty charges until the said amount is fully paid;
2. The amount of P50,000.00 as exemplary damages;
3. The sum of 25% of the total obligation as and by way of attorney's fees; and,
4. Cost of suit.

SO ORDERED.^[5]

Benavidez filed a motion for reconsideration but unfortunately for her, RTC-Antipolo, in its August 10, 2001 Order,^[6] denied her motion for lack of merit.

Frustrated, Benavidez appealed the June 1, 2001 Decision and the August 10, 2001 Order of RTC-Antipolo to the CA. She argued, in chief, that early on, the trial court should have dismissed the complaint for collection of sum of money filed by Salvador on grounds of *litis pendentia* and erroneous certification against forum shopping. She claimed that prior to the filing of the said complaint against her, she had already filed a complaint for the annulment of the promissory note evidencing her obligation against Salvador. According to her, there was substantial identity in the causes of action and any result of her complaint for annulment would necessarily affect the complaint for collection of sum of money filed against her. She added that Salvador never informed RTC-Antipolo about the pending case before RTC-Morong, rendering his certification on forum shopping erroneous.^[7]

Benavidez also argued that RTC-Antipolo erred in refusing to re-open the case for pre-trial conference and disallowing her to present evidence. She added that the absence of her counsel on the scheduled pre-trial conference caused her substantial prejudice. Though she was not unmindful of the general rule that a client was bound by the mistake or negligence of her counsel, she insisted that since the

incompetence or ignorance of her counsel was so great and the error committed was so serious as it prejudiced her and denied her day in court, the litigation should have been reopened to give her the opportunity to present her case.^[8]

The CA was not moved.

The CA reasoned out that RTC-Antipolo did not err in allowing Salvador to present his evidence *ex-parte* in accordance with Section 5, Rule 18 of the 1997 Rules of Court.^[9] Benavidez and her counsel failed to show a valid reason for their non-appearance at the pre-trial and so their absence was not excusable. Her counsel's negligence, as Benavidez cited, was not among the grounds for new trial or reconsideration as required under Section 1, Rule 37 of the Rules of Civil Procedure. The CA emphasized that well-entrenched was the rule that negligence of counsel bound his client. She was bound by the action of his counsel in the conduct of the trial. The appellate court also took note that she herself was guilty of negligence because she was also absent during the pre-trial despite due notice. Thus, Benavidez's position that the trial court should have reopened the case was untenable.^[10]

With regards to the grounds of *litis pendentia* and forum shopping cited by Benavidez, the CA wrote that there was no identity of the rights asserted in the cases filed before RTC-Morong and RTC-Antipolo. The reliefs prayed for in those cases were different. One case was for the annulment of the promissory note while the other one was a complaint for sum of money. There could be identity of the parties, but all the other requisites to warrant the dismissal of the case on the ground of *litis pendentia* were wanting.^[11] Thus, on November 22, 2005, the CA affirmed *in toto* the decision of RTC-Antipolo.^[12]

Feeling aggrieved by the affirmance, Benavidez filed a motion for reconsideration on the ground that the same was contrary to law and jurisprudence; that *litis pendentia* existed which resultantly made his certification on non-forum shopping untruthful; and, that her absence during the pre-trial was justified.

On June 08, 2006, the CA issued the *Amended Decision*, holding that the motion was partly meritorious. Accordingly, it modified its earlier decision by deleting the award of exemplary damages and attorney's fees because the award thereof was not supported by any factual, legal and equitable justification. Thus, the decretal portion of the Amended Decision reads:

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED**. The Decision dated November 22, 2005 is **MODIFIED** by **DELETING** the award of exemplary damages and attorney's fees.

SO ORDERED.^[13]

Still unsatisfied, Benavidez comes before the Court via a petition for review under Rule 45 of the Rules of Court, raising the following issues:^[14]

1. Whether or not the present case is barred by Civil Case No. 00-05660 which is pending before the RTC-Morong, Rizal.

2. Whether or not the case is dismissible because the certification against forum shopping was defective.

3. Whether or not the executed promissory note is void for being unconscionable and shocking to the conscience.

4. Whether or not the CA erred in holding that the order allowing respondent to present evidence *ex-parte* and submitting the case for decision is valid despite the fact that default judgment is looked upon with disfavor by this Court.

In fine, the core issue is whether or not the present case should have been dismissed on the ground of *litis pendentia*.

Benavidez argues that the outcome of the case, before RTC-Morong, where the annulment of the promissory note was sought, would have been determinative of the subject case before RTC-Antipolo where the enforcement of the promissory note was sought. If RTC-Morong would rule that the promissory note was null and void, then the case with RTC-Antipolo would have no more leg to stand on. He concludes that the requisites of *litis pendentia* were indeed present: *first*, both Benavidez and Salvador were parties to both complaints; *second*, both complaints were concerned with the promissory note; and *third*, the judgment in either of the said complaints would have been determinative of the other.^[15]

Benavidez further claims that the case should have been dismissed because the certification on forum shopping which accompanied Salvador's complaint was defective. He declared therein that he was not aware of any pending case before any court similar to the one he was filing, when in truth and in fact, there was one. This fact could not be denied because summons in the case before RTC-Morong was served on him and he even filed his answer to the said complaint.^[16]

Benavidez also pushes the argument that RTC-Antipolo committed an error of law when it allowed Salvador to present evidence *ex-parte* and eventually decided the case without waiting to hear her side. The trial court should have been more lenient. If there was any one to be blamed for her predicament, it should have been his counsel, Atty. Rogelio Jakosalem (*Jakosalem*). His counsel was negligent in his duties when he did not bother to file the necessary pre-trial brief and did not even appear at the pre-trial conference. He did not assist her either in filing a motion for reconsideration. Benavidez explains that Atty. Jakosalem did not appear on the scheduled pre-trial conference because he got mad at her when she refused to heed his advice to settle when the trial court granted Salvador's motion for issuance of preliminary attachment. Under the circumstances, she should have been exempted from the rule that the negligence of counsel binds the client.^[17]

For her part, she failed to appear because she was then suffering from illness. Contrary to the finding of the CA, her medical certificate was not belatedly submitted. She submitted it within a reasonable period after she received the order allowing Salvador to present evidence *ex-parte* and considering the case for resolution thereafter.^[18]

The Court's Ruling

In litis pendentia, there is no hard and fast rule in determining which of the two actions should be abated

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.^[19]

Litis pendentia exists when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.^[20]

On the other hand, forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.^[21]

There is forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.^[22]

In the present controversy, the Court is of the view that *litis pendentia* exists. All the elements are present: *first*, both Benavidez and Salvador are parties in both cases; *second*, both complaints are concerned with the same promissory note; and *third*, the judgment in either case would be determinative of the other.

With the foregoing, which case then should be dismissed? At first glance, it would seem that Civil Case No. 00-5660 or the complaint filed with RTC-Antipolo should have been dismissed applying the "priority-in-time rule." This rule, however, is not ironclad. The rule is not applied if the first case was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. A crucial consideration is the good faith of the parties. In recent rulings, the more appropriate case is preferred and survives. In *Spouses Abines v. BPI*,^[23] it was written:

There is no hard and fast rule in determining which of the actions should be abated on the ground of *litis pendentia*, but through time, the Supreme Court has endeavored to lay down certain criteria to guide lower courts faced with this legal dilemma. As a rule, preference is given to the first action filed to be retained. This is in accordance with the maxim *Qui prior est tempore, potior est jure*. There are, however, limitations to this rule. Hence, the first action may be abated if it was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. Thus, the *bona fides* or good faith of the parties is a crucial element. A later case shall not be abated if not brought to harass or vex; and the first case can be abated if it is merely an anticipatory action or, more appropriately, an anticipatory defense against an expected suit – a clever move to steal the march from the aggrieved party.