

SECOND DIVISION

[G.R. No. 129788, December 03, 2002]

**OROPEZA MARKETING CORPORATION, ROGACIANO OROPEZA
AND IMELDA S. OROPEZA, PETITIONERS, VS. ALLIED BANKING
CORPORATION, RESPONDENT.**

D E C I S I O N

QUISUMBING, J.:

This petition assails the decision^[1] dated March 13, 1997 of the Court of Appeals in CA-G.R. CV. No. 47775, which reversed and set aside the decision dated February 21, 1994 of the Regional Trial Court (RTC) of Davao City, Branch 15 in Civil Case No. 19325-88, which dismissed herein respondent's complaint on the ground of *litis pendencia*. The Court of Appeals ordered the records of Civil Case No. 19325-88 remanded to the court of origin for further proceedings. Also assailed is the appellate court's resolution of June 13, 1997,^[2] denying petitioners' Motion for Reconsideration.

The factual antecedents of this case, as culled from the records, show that:

On October 12, 1982, respondent Allied Banking Corporation (Allied Bank, for brevity) extended a loan of P780,000, with interest at 22% per annum, to petitioners Oropeza Marketing Corporation (OMC) and the spouses Rogaciano and Imelda^[3] Oropeza. The loan was payable at a monthly amortization of P20,000, subject to a penalty of 1.0% per month in case of non-payment, until the obligation was fully paid.^[4]

To secure this obligation, petitioners executed Promissory Note No. DSP#0191/82^[5] in Allied Bank's favor. In addition, the spouses Oropeza executed a Continuing Guaranty/Comprehensive Surety Agreement^[6] where they bound themselves jointly and severally with petitioner corporation to pay said obligation without need of demand in the aggregate amount of P840,000. As additional security for the loan, they also executed a Real Estate Mortgage^[7] over their properties.

Due to financial constraints, petitioners allegedly defaulted and reneged on their obligation. Thus, Allied Bank filed a collection suit^[8] with an application for a writ of preliminary attachment, docketed as Civil Case No. 19325-88, before the Regional Trial Court of Davao City, Branch 15.

While its application for a writ of attachment was pending, Allied Bank discovered that the Oropeza spouses had executed an Absolute Deed of Sale with Assumption of Mortgage in favor of Solid Gold Commercial Corporation, covering most of petitioner spouses' real properties, including those mortgaged to respondent.

Allied Bank then filed a complaint for the annulment of said Deed of Sale, docketed as Civil Case No. 19634-89, before the RTC of Davao City, Branch 9. Allied Bank likewise instituted a separate criminal complaint for fraudulent insolvency under Article 314 of the Revised Penal Code^[9] against petitioner spouses before the RTC of Davao City, Branch 10. It was docketed as Criminal Case No. 18518-89.

In the meantime, the court hearing Civil Case No. 19325-88, issued an order^[10] dated February 13, 1989, granting Allied Bank's application for attachment and fixed the amount of the attachment bond at P2,378,224.10. Allied Bank, however, failed to submit an attachment bond and instead moved that the service of the summons upon petitioner be held in abeyance. Consequently, the case was archived by the lower court in its order of June 7, 1989.

On August 29, 1989, the lower court ordered the revival of the Civil Case No. 19325-88, but held in abeyance respondent's motion to reduce the amount of the bond.

On October 13, 1989, respondent moved for the suspension of the proceedings in Civil Case No. 19325-88, citing the pendency of Criminal Case No. 18518-89. The lower court granted the motion and again ordered Civil Case No. 19325-88 archived. Allied Bank then moved for reconsideration resulting in the reopening of Civil Case No. 19325-88, with respect to OMC alone.

On October 26, 1992, the RTC of Davao City, Branch 9, rendered judgment in Civil Case No. 19634-89, disposing as follows:

WHEREFORE, premises considered, judgment is rendered:

- (1) Declaring that Exhibit 'J' or Deed of Sale with Assumption of Mortgage valid binding (sic) and not tainted with fraud;
- (2) Individual defendant's accounts have been satisfied, paid and set off by their deposit and receivables from General Banking Corporation evidenced by exhibit '16', '16-A' and '46-B';
- (3) The Promissory Note dated October 12, 1982 executed by the defendants spouses is declared void and of no force and effect;
- (4) Directing the plaintiffs to pay Attorney's fees in the sum of P20,000.00;
- (5) And costs.

SO ORDERED.^[11]

Respondent Allied Bank appealed to the Court of Appeals in CA-G.R. CV No. 41986.^[12]

Meanwhile, on August 13, 1993, upon respondent's motion, the lower court declared petitioners as in default for failure to file an answer.

On February 21, 1994, the lower court hearing Civil Case No. 19325-88, dismissed respondent's complaint on the ground of *litis pendentia*, thus:

While it is true that the decision of RTC, Sala 9 in Civil Case No. 19, 634 (sic) is pending appeal, it is equally true that there is identity of parties and identity of cause of action. This is obvious from the pleadings and the documents attached as annexes in this case. The relief being sought; that is for the defendant to pay the plaintiff, is the same in both cases. This case is hereby dismissed.

SO ORDERED.^[13]

Dissatisfied with this turn of events, respondent elevated the case to the appellate court. The appeal was docketed as CA-G.R. CV No. 47775.

On March 13, 1997, the Court of Appeals decided CA-G.R. CV No. 47775 in this wise:

WHEREFORE, premises considered, the order of dismissal issued by the Regional Trial Court of Davao City, Branch 15 is hereby reversed and set aside. Consequently, Civil Case No. 19325-88 is hereby ordered REINSTATED. Let the records of this case be remanded to the court of origin for further proceedings.

SO ORDERED.^[14]

Hence, this petition for review anchored on the following grounds:

I

THE HONORABLE COURT OF APPEALS, WITH DUE RESPECTS, GRIEVOUSLY ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO WANT OR IN EXCESS OF JURISDICTION AND OTHERWISE ERRED IN NOT SUSTAINING THE DISMISSAL OF THE COMPLAINT ON THE GROUND OF *LITIS PENDENTIA* OR, MORE PROPERLY UNDER THIS UNIQUE CIRCUMSTANCE, IN NOT SUSPENDING PROCEEDINGS THEREON UNTIL FINAL DETERMINATION IN THE OTHER CASE, CIVIL CASE NO. 19, 634-89.

II

THAT MORE SPECIFICALLY, THE HONORABLE COURT OF APPEALS SERIOUSLY GRAVELY ERRED AND ABUSED ITS DISCRETION IN REVERSING THE FINDINGS OF THE TRIAL AS TO THE PRESENCE OF THE SECOND REQUISITE – IDENTITY OF RIGHT ASSERTED AND RELIEF PRAYED FOR – OF *LITIS PENDENTIA* IN THE SUBJECT CASE.

III

THE HONORABLE COURT OF APPEALS, WITH DUE RESPECTS, SERIOUSLY ABUSED ITS DISCRETION IN MANIFESTLY OVERLOOKING, IGNORING AND BRUSHING ASIDE THE DECISION IN ANOTHER CASE, ALBEIT PENDING APPEAL, BUT WHICH HAD ALREADY DECLARED THE NULLITY AND INEFFECTUOSITY OF THE ACTIONABLE DOCUMENT SUBJECT OF THE INSTANT CASE, WHICH DECLARATION BARS AND FORECLOSES ANY CLAIM THEREUNDER OR, IN NOT CONSIDERING THE EXISTENCE OF A PREJUDICIAL QUESTION IN THIS CASE.

OR, THAT THERE IS A PREVIOUS QUESTION OR PREJUDICIAL QUESTION IN THIS CASE WHICH MUST FIRST BE FINALLY DETERMINED AND DECIDED BEFORE THIS CASE MAY PROCEED.^[15]

At the outset, we note that while the instant case was pending before us, the other case, CA-G.R. CV No. 41986, was decided by the appellate court on May 2, 2000, as follows:

WHEREFORE, foregoing premises considered, the APPEAL IS HEREBY DISMISSED and the APPEALED DECISION AFFIRMED IN TOTO. Costs against plaintiff-appellant.

SO ORDERED.^[16]

Allied Bank moved for reconsideration, but its motion was denied by the Court of Appeals in its resolution of February 16, 2001.

The appellate court's decision in CA-G.R. CV No. 41986 shows that the Court of Appeals sustained the finding of the trial court in Civil Case No. 19634-89 that the Deed of Sale With Assumption of Mortgage was valid and that Allied Bank's action to rescind it had already prescribed. The appellate court also held that the promissory note relied upon by Allied Bank was spurious, because it failed to adduce evidence to disprove the claim of the Oropeza spouses that they had paid their loans to Allied Bank and that said promissory note had no consideration.

This decision of the appellate court in CA-G.R. CV No. 41986, must be considered by this Court in deciding the validity of the ruling of the appellate court in CA-G.R. CV No. 47775, through another division, directing the trial court to proceed with the hearing of Civil Case No. 19325-88.

In view of this development, we find that petitioner's formulation of assigned errors boils down to one issue: Does the decision of the Court of Appeals in CA-G.R. CV No. 41986 constitute *res judicata* insofar as Civil Case No. 19325-88 is concerned? More succinctly stated, is there identity of parties, subject matter, and causes of action between the two civil cases?

Petitioners contend that the affirmance of the lower court's ruling in Civil Case No. 19634-89 by the appellate court in CA-G.R. CV No. 41986 would constitute *res judicata* in Civil Case No. 19325-88. They stress that inasmuch as the causes of action in Civil Case No. 19325-88 and Civil Case No. 19634-89 were both predicated on the same and identical promissory note, which was declared by the Court of Appeals to be void and to have no force or effect, respondent Allied Bank is now procedurally barred from further prosecuting Civil Case No. 19325-88.

For its part, respondent avers that the Court of Appeals found in CA-G.R. CV No. 47775, that there is no identity of rights asserted in the two civil cases — Civil Case No. 19634-89 is for annulment of deed of sale with assumption of mortgage, while the Civil Case No. 19325-88 is for collection of a sum of money. There is, according to respondent, disparity in the rights asserted and reliefs prayed for in the respective cases. Respondent further argues that there is no identity of parties in both cases as the defendants in Civil Case No. 19325-88 are OMC and the spouses Oropeza, while in Civil Case No. 19634-89, the defendants are Solid Gold

Commercial Corporation and the Oropeza spouses.^[17] Hence, respondent Allied Bank submits that there being no *litis pendencia* involved regarding the two cases, a decision in one cannot serve as *res judicata* in the other.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."^[18] *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.^[19] The principle of *res judicata* has two aspects, namely: (a) "bar by prior judgment" as enunciated in Rule 39, Section 49 (b)^[20] of the 1997 Rules of Civil Procedure; and (b) "conclusiveness of judgment" which is contained in Rule 39, Section 47 (c).^[21]

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action.^[22] In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or any other tribunal.^[23]

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.^[24] This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.^[25]

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.^[26] The existence here of the first three requisites is not disputed. With respect to the fourth element, however, the parties disagree. We must, therefore, focus now on whether identity of parties, subject matter, and causes of action are present in the two civil cases below. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.

Coming now to the identity of parties in Civil Case No. 19325-88 and Civil Case No. 19634-89 (and CA-G.R. CV No. 41986, for that matter), respondent Allied Bank