

## SECOND DIVISION

[ G.R. No. 95223, July 26, 1996 ]

**ALLIED BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS, HONORABLE ROQUE A. TAMAYO, JUDGE, REGIONAL TRIAL COURT OF MAKATI, BRANCH 132 AND EKMAN & COMPANY, INC., RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review of the decision of the Court of Appeals,<sup>[1]</sup> dismissing the petition for certiorari filed by herein petitioner Allied Banking Corporation to set aside two orders, dated October 8, 1984 and November 15, 1984, respectively, of the Regional Trial Court of Makati, Branch 132, in Civil Case No. 7500. It appears that on October 8, 1981, private respondent Ekman & Company Inc. (Ekman & Co.) obtained a loan in the amount of P5,700,000.00 from petitioner Allied Banking Corporation (hereafter called Allied Bank). Private respondent executed a promissory note, secured by US\$750,000.00 deposited in the Hongkong and Shanghai Bank in Hongkong. The transaction involves what is called in banking parlance as a back-to-back loan.

On December 15, 1982, Allied Bank filed a complaint<sup>[2]</sup> for sum of money against private respondent Ekman & Co. in the Court of First Instance of Pasig, Rizal. Upon the reorganization of the judiciary in 1983, the case was transferred to the Regional Trial Court in Makati, where it was docketed as **Civil Case No. 649** and assigned to its Branch 136. Allied Bank alleged that after applying private respondent's dollar deposit to its indebtedness, there remained a balance of P387,936.08, exclusive of interest and other charges owing to it but despite demands made on private respondent Ekman & Co., the amount had not been paid. Petitioner prayed that private respondent be ordered to pay the amount, plus interest at the rate of 21% per annum and penalty charges at 1% for each month, as well as attorney's fees and the costs.

On December 29, 1983, the case was dismissed by the RTC for failure of Allied Bank to prosecute its case. However, upon petitioner's explanation that it did not know that its case had been transferred to Makati as a result of the reorganization of the courts, the RTC reconsidered its order and directed that summons be served on private respondent Ekman & Co. at South Superhighway corner Rockefeller Street, Makati, Metro Manila. The summons was returned by the sheriff unserved, on the ground that private respondent had moved out of the address given by petitioner. For this reason the case was ordered archived by the court.

On June 6, 1984, having received information that private respondent was holding office at 470 San Andres Street, Malate, Manila, petitioner asked the court to reinstate the case and order private respondent to be served with summons at the

new address. The court granted the petitioner's motion. Although at first private respondent could not be found at the address, it was successfully served the summons on August 24, 1984.

It appears that on June 6, 1984, private respondent itself had filed a complaint<sup>[3]</sup> against petitioner, for accounting. The case was also filed in the Regional Trial Court of Makati where it was docketed as **Civil Case No. 7500**, but assigned to Branch 132. Ekman & Co. alleged that on April 8, 1981, it had obtained a loan in the amount of P5,700,000.00 from petitioner Allied Bank upon the security of a \$750,000.00-dollar deposit which was earning 14.5% interest per annum; that it asked Allied Bank for a statement of account and the return of its deposit which Allied Bank had applied to the payment of the loan but Allied Bank refused the demand. Private respondent prayed that petitioner be ordered to give private respondent an updated statement of account of its loan, to deliver to private respondent its dollar deposit less the amount of its loan, and to pay damages, attorney's fees and costs.

On September 28, 1984, petitioner Allied Bank moved to dismiss **Civil Case No. 7500**, citing the pendency of its action in Civil Case No. 649. Its motion was, however, denied in an order dated October 8, 1984 of Branch 132. Its motion for reconsideration was likewise denied in an order of the court dated November 15, 1984. The court ruled that private respondent Ekman & Co. would lose the P15,548.00 it had spent for filing fees, "without so much a fight, which naturally cannot be considered as fair and equitable" if the case were dismissed.[4]

On December 12, 1984, petitioner Allied Bank filed its answer. Accordingly, on March 21, 1985, a pretrial conference was held and on May 28, 1985, hearing began. However, on September 14, 1985, Allied Bank filed a petition for certiorari in the Court of Appeals questioning the orders of Branch 132 denying its motion to dismiss **Civil Case No. 7500**. Allied Bank then moved for a suspension of the proceedings in the case.

Meanwhile, **Civil Case No. 7500** was transferred from Branch 132 to Branch 149 of the RTC, which dismissed the case for failure of private respondent to prosecute its case. However, upon representation of private respondent Ekman & Co. that its failure to proceed with the hearing was due to the fact that there was a pending petition for certiorari in the Court of Appeals, the RTC reconsidered its order. The case was thereafter transferred to another branch (Branch 56). As by then the Court of Appeals had ordered the elevation of the records of the case, no further proceedings were held. The Court of Appeals actually ordered the elevation of the records of Civil Case No. 649 also, as a consequence of which the proceedings in the two cases were suspended.

On August 31, 1990, the Court of Appeals rendered its decision, by dismissing the petition of Allied Bank and ordering the trial court to proceed with the hearing of Civil Case No. 7500. In sustaining the trial court's order denying petitioner's motion to dismiss the complaint of Ekman & Co., the Court of Appeals stated: (1) that when private respondent Ekman & Co. filed Civil Case No. 7500 on June 6, 1984, it did not know of the existence of Civil Case No. 649, as in fact the summons in that case was served on Ekman & Co. only on August 24, 1984; (2) that petitioner Allied Bank in bad faith did not inform private respondent of the fact that it had filed the complaint in Civil Case No. 649, despite the fact that on May 16, May 24 and June 5,

1984, private respondent had written Allied Bank signifying its readiness to pay its obligation and for this purpose asked for a statement of account; (3) that petitioner was estopped from questioning the order of denial of the trial court, considering that Allied Bank subsequently filed its answer and participated in the pre-trial conference and trial on the merits; and (4) that petitioner was guilty of laches in filing its petition for certiorari only ten (10) months after the denial of its motion to dismiss.

Hence this petition for review on certiorari. Petitioner contends that Civil Case No. 7500 should be dismissed because of the pendency of another case between the same parties for the same cause of action or, in the alternative, that the two cases should be consolidated. It therefore prays that the decision of the Court of Appeals be reversed.

*First.* The pendency of a case as a ground for the dismissal of actions,<sup>[5]</sup> like *res judicata*, is based on the policy against multiplicity of suits.<sup>[6]</sup> Since in most cases the actions are not filed at the same time, but one after the other, the question is which one should be dismissed.

The rule in general is that it should be the later case.<sup>[7]</sup> This rule, however, is not absolute. Indeed, as noted in *Teodoro v. Mirasol*,<sup>[8]</sup> "the Rules do not require as a ground for dismissal of a complaint that there is a prior pending action. They provide that there is a pending action, not a pending prior action." It may happen, therefore, that the first case may have to be dismissed. For example, if, as in *Teodoro*, the action to fix the period of the lease was filed evidently to preempt an action for ejectment, the fact that it was filed first cannot be used as basis to dismiss the later action for ejectment.

Thus, in *University Physician Services, Inc. v. Court of Appeals*,<sup>[9]</sup> it was held that although the lessee's action for damages and injunction against the lessor was filed prior to the filing of the ejectment case against her, her complaint for damages and not the ejectment case should be dismissed. As the Court explained:

The issue of whether private respondent had the right to occupy subject apartment unit should be properly threshed out in an ejectment suit and not in an action for damages where the question of possession is likewise the primary issue to be resolved.

We cannot simply ignore the fact that private respondent, after her unjustified refusal to vacate the premises, was aware that an ejectment case against her was forthcoming. It is therefore evident that the filing of the complaint for damages and preliminary injunction was but a canny and preemptive maneuver intended to block the action for ejectment which petitioner was to take against private respondent.

The matter raised in the Regional Trial Court of Manila may be properly determined in the ejectment suit before the Metropolitan Trial Court, in consonance with the rule prohibiting multiplicity of suits. And the mere fact that the unlawful detainer suit was filed later than the one for damages does not change the situation of the parties (*Rosales v. CFI*, 154 SCRA 153 [1987]).