



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BANK OF COMMERCE,

Petitioner,

G.R. No. 225299

Present:

- versus -

LEONEN, *Chairperson*

HERNANDO,*

ZALAMEDA,

ROSARIO, and

MARQUEZ, *JJ.*

**DHN CONSTRUCTION AND
DEVELOPMENT CORPORATION,**

Respondent.

Promulgated:

December 1, 2021

MisDcBatt

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DECISION

ZALAMEDA, J.:

This Petition for Review on *Certiorari*¹ seeks the reversal of the Decision² dated 19 December 2014 and Resolution³ dated 23 June 2016 of the Former Special Tenth Division of the Court of Appeals (CA) in CA-G.R. CV No. 100641, setting aside the Orders dated 30 July 2012⁴ and 30 January 2013⁵ of Branch 142, Regional Trial Court (RTC), Makati City, in Civil Case No. 12-167, and ordering the remand of the case back to the RTC for appropriate action. The RTC granted the Motion to Dismiss filed by petitioner Bank of Commerce (BOC) and dismissed the complaint filed by

* Carandang, *J.*, no part, due to her prior participation in the Court of Appeals; Hernando, *J.*, designated additional Member per Raffle dated 17 November 2021.

¹ *Rollo*, pp. 12-39.

² *Id.* at 51-61; penned by Associate Justice Vicente S.E. Veloso and concurred in by Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

³ *Id.* at 63-64.

⁴ *Id.* at 562-568.

⁵ *Id.* at 594.

respondent DHN Construction and Development Corp. (DHN) on the ground of *res judicata*.

Antecedents

The case stemmed from a Complaint,⁶ docketed as Civil Case No. 12-167, filed by DHN against BOC before the RTC in Makati City (RTC-Makati). DHN sought the declaration of nullity of the two (2) promissory notes signed by its President, Mr. Dionisio P. Reyno, which supposedly gave rise to an alleged loan obligation in the amount of ₱130,312,227.33, for being simulated and/or fictitious. DHN averred that it was an accredited real estate contractor of Fil-Estate Properties, Inc. (Fil-Estate) and had been involved in several of the latter's real estate projects including Eight Sto. Domingo Place – Residential Tower B (Eight Sto. Domingo Project) in Sto. Domingo Street, Quezon City.⁷

Sometime 2007, DHN was requested by Fil-Estate and BOC to enter into an arrangement whereby BOC would extend a ₱115,000,000.00 loan to Fil-Estate for the Eight Sto. Domingo Project, but that said loan would be booked in DHN's name for purposes of avoiding certain Bangko Sentral ng Pilipinas (BSP) regulations.⁸ After DHN declined the request, it noticed that Fil-Estate "became tight on its payments to [DHN]'s progress billings with Fil-Estate's other projects." Eventually, it was told that all of Fil-Estate's outstanding obligations with DHN will be paid "as soon as Reyno signs the loan documents" as requested.⁹ Thus, and with the assurance that Fil-Estate will settle its outstanding obligations and on the understanding that Fil-Estate is the one actually liable for the payment of the loan, DHN agreed and Reyno, as President, signed the two blank promissory notes presented to him for signature.¹⁰

Sometime in 2008, DHN received letters from SGV and Co., BOC's external auditors, requesting for: (1) confirmation of the correctness of its loan in the amount of ₱130,312,227.33;¹¹ and (2) submission of several documents for loan renewal.¹²

DHN thereafter wrote BOC informing it that it cannot provide the verification and documents requested as the proceeds of the loan were never deposited to, nor received by, DHN's account.¹³ DHN also asked Fil-Estate

⁶ Id. at 350-365.

⁷ Id. at 351.

⁸ Id. at 352.

⁹ Id. at 354.

¹⁰ Id. at 355-359.

¹¹ Id. at 356.

¹² Id. at 357.

¹³ Id.

for copies of the promissory notes “with their corresponding statements and other related information which had been filled up thereon.”¹⁴ Its request, however, was not heeded. Instead, Fil-Estate, in a letter dated 19 February 2009, wrote:

This is to confirm our understanding that the project loan obtained by your company from [BOC] to finance the construction of Phase 1 of the Sto. Domingo Tower 1 Project is secured by sufficient collateral consisting of units in the same building owned by [Fil-Estate].

All payments of interest and principal on this facility will be settled by the proceeds of sale of these units and are for the account of [Fil-Estate].¹⁵

In a subsequent meeting, BOC representatives explained that there was a need to “regularize” the loan facility extended to DHN to be able to comply with observations from BSP examiners. Thus, DHN, through Reyno, should execute an affidavit confirming the loan with BOC and sign another promissory note.

When DHN refused, BOC, in a letter dated 11 May 2009, declared the obligation in the amount of ₱130,312,227.33 due and demandable. This prompted DHN to file the complaints against BOC, including one before BSP for unsafe banking practices, false statement and violation of anti-money laundering laws.¹⁶

In response, BOC filed a Motion to Dismiss,¹⁷ claiming that the complaint was already barred by prior judgment and that the complaint does not state a cause of action. According to BOC, DHN had already previously filed a Complaint for Annulment of Contract with Damages before the RTC in Quezon City (RTC-Quezon City), docketed as Civil Case No. Q-09-66170, and that the same has been dismissed by the court therein in an Order dated 29 December 2011. It argued that the dismissal of Civil Case No. Q-09-66170 was a judgment on the merits as the court, thus:

The Quezon City RTC, after considering the allegations of facts contained in the pleadings, issued an order that went into the very issue raised in the previous and present complaints which is the validity of the loan contract. It ruled that the obligation was incurred by DHN and that said act was voluntary on its part. Xxx the Quezon City RTC clearly stated that DHN is already precluded from impugning the validity of the loan as it already

¹⁴ Id.

¹⁵ Id. at 140, 358.

¹⁶ Id. at 359-360.

¹⁷ Id. at 468-481.

reaped the benefits arising from the said loan. This being the case, the loan is thus a valid and binding contract and DHN can be held liable for the loan obligation.¹⁸

Furthermore, BOC argued that since the Complaint did not allege that DHN's consent was vitiated by fraud, mistake, duress, intimidation or undue influence, there is no ground for the annulment of their contract, which carried with it the presumption of good faith and due execution.¹⁹ The allegations of the Complaint would allegedly readily show that DHN "submitted the necessary documents for the processing and execution of loan documents" (which included, among others, a Resolution dated 07 January 2008 issued by DHN's Board of Directors and a Secretary's Certificate dated 26 March 2008 authorizing the acquisition of loan accommodations from BOC) and that Reyno actually signed the subject Promissory Notes and Disclosure Statement in connection therewith on DHN's behalf.²⁰ In addition, BOC contended that since DHN benefited from the proceeds of the loan (with Fil-Estate subsequently issuing several notices of award and notice to proceed in DHN's favor), it cannot now impugn the loan's validity on the ground of estoppel.

In its Opposition,²¹ DHN countered that BOC, by filing the motion to dismiss, had already impliedly admitted the allegation that the two (2) promissory notes were absolutely simulated. It likewise maintained that the dismissal of Civil Case No. Q-09-66170 did not serve to bar the case subsequently filed in Makati as it was not a judgment on the merits. There was no trial conducted, the Order of Dismissal did not delve on the merits of the case, and the causes of action in the two cases are different (the complaint in Quezon City was for the *annulment* of contract, while the complaint filed in Makati was for the *declaration of nullity* of contract). DHN also denies ever receiving the loan proceeds, claiming that the same were actually deposited in an escrow account in Fil-Estate and BOC's names. Finally, and even assuming arguendo that DHN received benefits by reason of the two promissory notes, it cannot be estopped from impugning the validity of the same as there can be no estoppel in void or inexistent contracts.

Ruling of the RTC

In its Order dated 30 July 2012,²² the RTC-Makati granted BOC's motion and ordered the dismissal of the Complaint:

¹⁸ Id. at 474.

¹⁹ Id. at 324-326.

²⁰ Id. at 325, 327.

²¹ Id. at 511-529.

²² Id. at 161-174. Penned by RTC Presiding Judge Dina Pestaño Teves.



After a careful examination of the records, the Court rules that *res judicata* had barred the present complaint in view of the RTC QC's Order of Dismissal which actually ruled into the substance of the relief sought by plaintiff DHN, which is the nullity of the two promissory notes and must be regarded as an adjudication on the merits.

Xxx

The first and second elements [of *res judicata*] are present in this case. The QC RTC's Order of Dismissal had been rendered final and executory when no appeal was undertaken by DHN within the reglementary period. The jurisdiction of the QC RTC over the subject matter is undisputed.

The QC RTC after considering the allegations of fact contained in the pleadings xxx ruled that DHN's complaint failed to state a cause of action against BOC in view of the voluntary act of DHN in entering into contact which is presumed to know the consequence of such acts; that DHN's allegation that it was forced to accede to BOC's requests because it was in a financial bind is not sufficient ground to annul the promissory notes and that absent any showing that DHN was forced to sign said documents, no violation of DHN's right would give rise to a cause of action. The QC RTC further declared that DHN is already precluded from impugning the validity of the loan as it already reaped the benefits arising from said contract. The 29 December 2011 Order is therefore a judgment on the merits satisfying the third requirement of *res judicata*.

Xxx

The parties in both cases are exactly the same. There is likewise substantial identity of rights asserted and reliefs prayed for.

Verily, the principle of *res judicata* in the mode of conclusiveness of judgment applies in this case. The 29 December 2011 Dismissal Order in Civil Case No. Q-09-66170 by the QC RTC is conclusive on the validity of the subject promissory notes, which will bar a subsequent action on the same subject matter. If allowed, it would result in the re-litigation of the same causes involving the same issues, parties and subject matter with a possibility of two conflicting judgments on the validity of the two promissory notes.²³

On 29 September 2012, DHN sought reconsideration,²⁴ but this was denied in an Order²⁵ dated 30 January 2013 for lack of merit.

²³ Id. at 564, 567-568.

²⁴ Id. at 569-579.

²⁵ Id. at 594.



DHN thereafter filed a Notice of Appeal²⁶ dated 07 February 2013. On 13 March 2013, the RTC-Makati issued an Order forwarding the records of the case to the CA for further proceedings.²⁷

Ruling of the CA

The CA, on appeal, set aside the Orders issued by the RTC-Makati. In its assailed Decision dated 19 December 2014,²⁸ the CA disagreed that the principle of *res judicata* applied in this case. It held:

Here, it cannot be validly argued that the 29 December 2011 Order of the QC RTC in Civil Case No. Q-09-66170 which dismissed the complaint thereon for lack of cause of action was a final judgment or Order. Apart from [BOC]'s invoking it in a Motion to Dismiss, the RTC's finding that "a perusal of the allegations in the complaint will show that the same failed to state a cause of action against [BOC]", is an admission that the 29 December 2011 Order of dismissal is grounded on **Section 1(g), Rule 16** of the Rules of Court, viz:

SECTION 1. Grounds. -- Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

Xxx xxx xxx

(g) That the pleading asserting the claim states no cause of action.

However, **Section 5 of said Rule** provides:

SEC. 5. Effect of dismissal. -- Subject to the right of appeal, an order granting a motion to dismiss based on **paragraphs (f), (h) and (i) of Section 1** hereof **shall bar the refiling of the same action or claim.**

Not being grounded on "paragraphs (f), (h) and (i) of Section 1, Rule 16, the "refiling of the same action or claim" is deemed **not** barred.

Such is the rule even if the RTC in Civil Case No. 1-09-66170 allegedly ruled on the merits of the case. For, it had no business in ruling on the merits of the case against [DHN], as it is settled that on the question of whether or not the complaint states no cause of action, only the allegations therein are to be relied upon by the Court. Xxx

ACCORDINGLY, the appealed Orders dated July 30, 2012 and January 13, 2013 are **SET ASIDE**. Let this case be remanded to

²⁶ Id. at 595.

²⁷ Id. at 597.

²⁸ Id. at 51-61.

the Court *a quo* for its appropriate action.²⁹

With the denial³⁰ of its Motion for Reconsideration of the CA's Decision, BOC now comes before this Court to seek recourse.

On 05 September 2016, this Court issued a Resolution³¹ requiring DHN to file its Comment to the Petition. Accordingly, DHN filed its Comment³² dated 19 October 2016.

Issue

This Court now resolves whether the CA erred in setting aside the Orders of the RTC-Makati and ordering the remand of the case. In so doing, we must determine whether the principle of *res judicata* applies to bar the complaint filed by DHN against BOC before the RTC-Makati.

Ruling of the Court

We **GRANT** the petition.

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. As explained by this Court in *Fenix (CEZA) International, Inc. vs. Executive Secretary*,³³ this rule

...rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

This judicially created doctrine exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquility. Moreover, public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata*, would

²⁹ Id. at 59-60.

³⁰ Id. at 63-64.

³¹ Id. at 733.

³² Id. at 751-766.

³³ G.R. No. 235258, 06 August 2018.

be endless.

For *res judicata* to apply, the following elements must be proved present: (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.³⁴

We find that all the requisites of *res judicata* are present as to bar the complaint filed by DHN against BOC before the RTC-Makati.

First, it is not disputed that the Order dated 29 December 2011³⁵ issued by the RTC-Quezon City dismissing Civil Case No. Q-09-66170 has become final, not having been timely challenged by DHN. DHN, in fact, maintains that the dismissal in said case was without prejudice.³⁶

Second, there is likewise no question that the RTC-Quezon City had jurisdiction over the subject matter and the parties. The action filed by DHN, which is one for the annulment of contract, is an action incapable of pecuniary estimation properly cognizable by the RTC.³⁷ The records of the case would also show that both parties have submitted to the RTC's jurisdiction. In any case, DHN, as the party plaintiff, cannot now deny the RTC's jurisdiction over the case it itself filed before said court.

Third, as correctly pointed out by BOC, the Order dated 29 December 2011 is a judgment on the merits as it disposed of the very issue raised in the Complaint filed by DHN, that is, *the validity of the loan contract*.

At the outset, we must note that the RTC-Quezon City failed to properly distinguish between a motion to dismiss for *failure of the complaint to state a cause of action* and a motion to dismiss based on *lack of cause of action*. The difference between these two grounds has been explained in *Domondon vs. Lopez*³⁸, thus:

The first is governed by Rule 16, §1(g), while the second by Rule 33 of the 1997 Revised Rules of Civil Procedure. Xxx

Xxx a motion to dismiss based on lack of cause of action is filed by the defendant after the plaintiff has presented his evidence on the ground that the latter has shown no right to the relief sought.

³⁴ *City Government of Tacloban v. Court of Appeals*, G.R. No. 221554 (Resolution), 03 February 2021.

³⁵ *Rollo*, pp. 348-349. Penned by RTC Presiding Judge Ralph S. Lee.

³⁶ *Id.* at 756.

³⁷ *De Ungria v. Court of Appeals*, 669 Phil 585-604 (2011).

³⁸ 432 Phil 953-966 (2002) citing *China Road and Bridge Corp. v. Court of Appeals*, 401 Phil 590-604 (2000).



While a motion to dismiss under Rule 16 is based on preliminary objections which can be ventilated before the beginning of the trial, a motion to dismiss under Rule 33 is in the nature of a demurrer to evidence on the ground of insufficiency of evidence and is presented only after the plaintiff has rested his case.³⁹ (Emphases supplied.)

In filing a motion to dismiss on the ground of *failure to state a cause of action*, a defendant hypothetically admits the truth of the facts alleged in the complaint, as well as inferences fairly deducible therefrom.⁴⁰ A dismissal based on said motion would thus be necessarily limited to an examination of the allegations made in the complaint. At that point, it would still be premature to consider evidence (or lack of evidence) outside the four corners of the complaint.⁴¹

Here, the RTC-Quezon City, in granting BOC's motion to dismiss (which was based on the ground of failure to state a cause of action) proceeded to rule on the following **disputed** issues of fact: DHN's claims regarding the absolutely simulated nature of the parties' loan contract, as well as BOC's defenses of DHN's consent (and enjoyment of benefits from said loan). Otherwise stated, over and above a finding that DHN *failed to state* a cause of action, the RTC-Quezon City also determined that DHN had **no** cause of action against BOC prior to presentation of the parties' respective evidence in the course of the trial.

This notwithstanding, the RTC-Quezon City's dismissal can be considered a judgment on the merits which bars the filing of the complaint subsequently filed before the RTC-Makati, even without any trial on the merits or formal presentation of evidence.⁴²

In *Manalo vs. Court of Appeals*, we held that "a judgment is on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections. It is not necessary, however, that there be a trial."⁴³ In this case, the RTC-Quezon City, on the basis of the pleadings thus far filed and without receiving evidence from the parties, unequivocally determined the rights and obligations of DHN and BOC with respect to the causes of action and the subject matter of the case, thereby definitively putting an end to the

³⁹ *Domondon v. Lopez*, supra.

⁴⁰ *Spouses Fernandez v. Smart Communications, Inc.*, G.R. No. 212885, 17 July 2019.

⁴¹ See *Perpetual Savings Bank v. Fajardo*, 295 Phil. 794-807 (1993) and *Heirs of Sadhwani v. Sadhwani*, G.R. No. 217365, 14 August 2019.

⁴² *Diaz, Jr. v. Valenciano, Jr.*, G.R. No. 209376, 06 December 2017 citing *Escarte, Jr. v. Office of the President of the Philippines*, 270 Phil. 99-107 (1990). See also *Luzon Development Bank v. Conquilla*, 507 Phil. 509-538 (2005).

⁴³ 409 Phil. 105-119 (2001) citing *Mendiola v. Court of Appeals*, 327 Phil. 1156-1166 (1996).

controversy between them.⁴⁴ We quote the Order in relevant part:

A perusal of the allegations of the complaint will show that the same failed to state a cause of action against [BOC]. When [DHN] signed the Promissory Notes and other loan documents, it entered into the contract freely and is presumed to know the consequences of such acts. The allegation that [DHN] was forced to accede to [BOC]'s requests because it was in a financial bind is not sufficient ground to annul the Promissory Notes. **Absent any showing that [DHN] was forced to sign the said documents, no violation of [DHN]'s rights which could give rise to a cause of action exists. [DHN] is also precluded from impugning the validity of the Promissory Notes because as ___ by [DHN], several awards and notice to proceed were to [DHN] after the submission of the required documents relative to the loan.** A party to a contract cannot deny the validity thereof after enjoying its benefits without outrage to one's sense of justice and fairness. Courts have no power to ___ parties from obligations voluntarily assumed, simply because their ___ turned out to be disastrous or unwise investments.

WHEREFORE, premises considered, the Motion to Dismiss (Re: Complaint dated 10 December 2009) is hereby GRANTED. The Complaint dated December 10, 2009 filed against defendant [BOC] is hereby DISMISSED.

SO ORDERED.⁴⁵ (Emphases supplied.)

Fourth, as between the complaints filed before the RTC-Quezon City and RTC Makati, we find identity of parties, subject matter, and causes of action. Both complaints involved the loan contracts allegedly executed between BOC and DHN. DHN, however, disputes that there is identity of causes of action insofar as the complaint it filed before the RTC-Quezon City was for the *annulment of contract*, while the action it subsequently brought before the RTC-Makati was for the *declaration of nullity of contract*.⁴⁶

The test to determine whether causes of action are identical so as to warrant application of the rule of *res judicata* is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first, **even if the forms or nature of the two actions be different**.⁴⁷

Contrary to DHN's contention, we find in this case that the evidence

⁴⁴ *Allied Banking Corp. v. Court of Appeals*, 299 Phil. 252-262 (1994).

⁴⁵ *Rollo*, p. 349.

⁴⁶ *Id.* at 757.

⁴⁷ *Vda. De Cruz v. Carriaga, Jr.*, 256 Phil. 72 (1989). (Emphases supplied.)

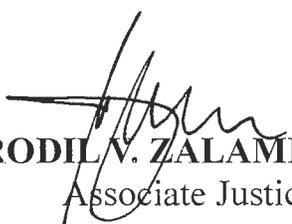
necessary to sustain the annulment of the loan contracts will be the **same** as the evidence required to sustain a declaration of said contracts' nullity, that is, that DHN did not actually consent to be liable for the loan and that it was Fil-Estate who received the proceeds and bound itself to settle the loan obligation. Indeed, a change in the *form of the action* or in the relief sought does not remove a proper case from the application of *res judicata*.⁴⁸

In sum, while the RTC-Quezon City's inaccurate pronouncement could have been challenged through a special civil action for *certiorari*,⁴⁹ DHN failed to do so. Thus, and regardless of the correctness of its ruling on the contract's simulated character, the fact of the matter is that the same had already attained finality. As a result, the RTC-Quezon City's 29 December 2011 Order bars any other action involving *the same parties, subject matter, and cause of action*, such as the second complaint for declaration of nullity of contract.⁵⁰

We hasten to add though that this ruling is, of course, without prejudice to a proper recourse DHN may have *against Fil-Estate* who, it should be noted, did not appear to deny primary liability for the subject loan⁵¹ yet was never made a party to any of the proceedings below.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated 19 December 2014 and Resolution dated 23 June 2016 of the Former Special Tenth Division of the Court of Appeals (CA) in CA-G.R. CV No. 100641 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 12-167 filed by DHN Construction and Development Corporation against Bank of Commerce is **DISMISSED** on the ground of *res judicata*.

SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

⁴⁸ *Carlet v. Court of Appeals*, 341 Phil. 99 (1997).

⁴⁹ *Heirs of Sadhwani v. Sadhwani*, supra.

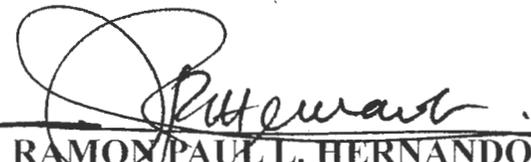
⁵⁰ *De Leon v. Dela Llana*, 753 Phil. 692 (2015).

⁵¹ In its letter dated 09 February 2009 to DHN, Fil-Estate confirmed that the loan obtained by DHN from BOC is secured by sufficient collateral consisting of units in the Eight Sto. Domingo Project owned by Fil-Estate and that "payments of interests and principal xxx are for the account of Fil-Estate Properties, Inc." (*Rollo*, p. 140.)

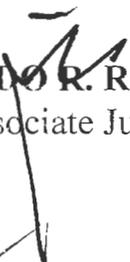
WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

