

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**CARLOS GELANO and GUILLERMINA
MENDOZA DE GELANO,**
Petitioners,

-versus-

**G.R. No. L-39050
February 24, 1981**

**THE HONORABLE COURT OF
APPEALS and INSULAR SAWMILL,
INC.,**
Respondents.

X-----X

DECISION

DE CASTRO, J.:

Private respondent Insular Sawmill, Inc. is a corporation organized on September 17, 1945 with a corporate life of fifty (50) years, or up to September 17, 1995, with the primary purpose of carrying on a general lumber and sawmill business. To carry on this business,

private respondent leased the paraphernal property of petitioner-wife Guillermina M. Gelano at the corner of Canonigo and Otis, Paco, Manila for P1,200.00 a month. It was while private respondent was leasing the aforesaid property that its officers and directors had come to know petitioner-husband Carlos Gelano who received from the corporation cash advances on account of rentals to be paid by the corporation on the land.

Between November 19, 1947 to December 26, 1950 petitioner Carlos Gelano obtained from private respondent cash advances of P25,950.00. The said sum was taken and received by petitioner Carlos Gelano on the agreement that private respondent could deduct the same from the monthly rentals of the leased premises until said cash advances are fully paid. Out of the aforementioned cash advances in the total sum of P25,950.00, petitioner Carlos Gelano was able to pay only P5,950.00 thereby leaving an unpaid balance of P20,000.00 which he refused to pay despite repeated demands by private respondent. Petitioner Guillermina M. Gelano refused to pay on the ground that said amount was for the personal account of her husband asked for by, and given to him, without her knowledge and consent and did not benefit the family.

On various occasions from May 4, 1948 to September 11, 1949 petitioners husband and wife also made credit purchases of lumber materials from private respondent with a total price of P1,120.46 in connection with the repair and improvement of petitioners' residence. On November 9, 1949 partial payment was made by petitioners in the amount of P91.00 and in view of the cash discount in favor of petitioners in the amount of P83.00, the amount due private respondent on account of credit purchases of lumber materials is P946.46 which petitioners failed to pay.

On July 14, 1952, in order to accommodate and help petitioners renew previous loans obtained by them from the China Banking Corporation, private respondent, through Joseph Tan Yoc Su, executed a joint and several promissory note with Carlos Gelano in favor of said bank in the amount of P8,000.00 payable in sixty (60) days. For failure of Carlos Gelano to pay the promissory note upon maturity, the bank collected from the respondent corporation the amount of P9,106.00 including interests, by debiting it from the

corporation's current account with the bank. Petitioner Carlos Gelano was able to pay private respondent the amount of P5,000.00 but the balance of P4,106.00 remained unsettled. Guillermina M. Gelano refused to pay on the ground that she had no knowledge about the accommodation made by the corporation in favor of her husband.

On May 29, 1959 the corporation, thru Atty. German Lee, filed a complaint for collection against herein petitioners before the Court of First Instance of Manila. Trial was held and when the case was at the stage of submitting memorandum, Atty. Lee retired from active law practice and Atty. Eduardo F. Elizalde took over and prepared memorandum.

In the meantime, private respondent amended its Articles of Incorporation to shorten its term of existence up to December 31, 1960 only. The amended Articles of Incorporation was filed with, and approved by the Securities and Exchange Commission, but the trial court was not notified of the amendment shortening the corporate existence and no substitution of party was ever made. On November 20, 1964 and almost four (4) years after the dissolution of the corporation, the trial court rendered a decision in favor of private respondent the dispositive portion of which reads as follows:

“WHEREFORE, judgment is rendered, ordering:

“1. Defendant Carlos Gelano to pay plaintiff the sum of:

‘(a) P19,650.00 with interest thereon at the legal rate from the date of the filing of the complaint on May 29, 1959 until said sum is fully paid;

‘(b) P4,106.00, with interest thereon at the legal rate from the date of the filing of the complaint until said sum is fully paid;

“2. Defendants Carlos Gelano and Guillermina Mendoza to pay jointly and severally the sum of:

‘(a) P946.46, with interest thereon at the agreed rate of 12% per annum from October 6, 1946, until said sum is fully paid;

‘(b) P550.00, with interest thereon at the legal rate from the date of the filing of the complaint until the said sum is fully paid;

‘(c) Costs of the suit’; and

“3. Defendant Carlos Gelano to pay the plaintiff the sum of P2,000.00 attorney’s fees.

“The Counterclaims of defendants are dismissed.

“SO ORDERED.”^[1]

Both parties appealed to the Court of Appeals, private respondent also appealing because it insisted that both Carlos Gelano and Guillermina Gelano should be held liable for the substantial portion of the claim.

On August 23, 1973, the Court of Appeals rendered a decision modifying the judgment of the trial court by holding petitioner spouses jointly and severally liable on private respondents claim and increasing the award of P4,106.00. The dispositive portion of the decision reads as follows:

“WHEREFORE, modified in the sense that the amount of P4,106.00 under paragraph 1 (b) is raised to P8,160.00 and the clarification that the conjugal partnership of the spouses is jointly and severally liable for the obligations adjudged against defendant Carlos Gelano, the judgment appealed from is affirmed in all other respects.”^[2]

After petitioners received a copy of the decision on August 24, 1973, they came to know that the Insular Sawmill Inc. was dissolved way back on December 31, 1960. Hence, petitioners filed a motion to dismiss the case and or reconsideration of the decision of the Court of Appeals on grounds that the case was prosecuted even after

dissolution of private respondent as a corporation and that a defunct corporation cannot maintain any suit for or against it without first complying with the requirements of the winding up of the affairs of the corporation and the assignment of its property rights within the required period.

Incidentally, after the receipt of petitioners' motion to dismiss and/or reconsideration or on October 28, 1973, private respondent thru its former directors filed a Petition for Receivership before the Court of First Instance of Manila, docketed as Special Proceedings No. 92303,^[3] which petition is still pending before said court.

On November 5, 1973, private respondent filed a comment on the motion to dismiss and/or reconsideration and after the parties have filed reply and rejoinder, the Court of Appeals on July 5, 1974 issued a resolution^[4] denying the aforesaid motion.

Hence, the present Petition for Review, petitioners assigning the following errors:

I

“THE ‘RESPONDENT COURT’ ERRED IN DENYING THE PETITIONERS’ MOTION TO DISMISS THIS CASE DESPITE THE CLEAR FINDING THAT ‘RESPONDENT’ HAD ALREADY CEASED TO EXIST AS A CORPORATION SINCE DECEMBER 31, 1960 YET.

II

“THE ‘RESPONDENT COURT’ ERRED IN NOT HOLDING THAT ACTIONS PENDING FOR OR AGAINST A DEFUNCT CORPORATION ARE DEEMED ABATED.

III

“THE ‘RESPONDENT COURT’ ERRED IN HOLDING INSTEAD THAT EVEN IF THERE WAS NO COMPLIANCE WITH SECTIONS 77 AND 78 OF THE CORPORATION LAW FOR THE WINDING UP OF THE AFFAIRS OF THE

CORPORATION BY THE CONVEYANCE OF CORPORATE PROPERTY AND PROPERTY RIGHTS TO AN ASSIGNEE, OR TRUSTEE OR THE APPOINTMENT OF A RECEIVER WITHIN THREE YEARS FROM THE DISSOLUTION OF SUCH CORPORATION, ANY LITIGATION FILED BY OR AGAINST THE DISSOLVED CORPORATION, INSTITUTED WITHIN THREE YEARS AFTER SUCH DISSOLUTION BUT WHICH COULD NOT BE TERMINATED WITHIN SAID PERIOD, MAY STILL BE CONTINUED AS IT IS NOT DEEMED ABATED.

IV

“THE ‘RESPONDENT COURT’ ERRED IN THE APPLICATION TO THIS CASE OF ITS RULING IN PASAY CREDIT AND FINANCE CORPORATION, VERSUS LAZARO, ET AL., 46 O.G. (11) 5528, AND IN OVERLOOKING THE DISTINCTION LAID DOWN BY THIS HONORABLE COURT IN NUMEROUS DECIDED CASES THAT ONLY CASES FILED IN THE NAME OF ASSIGNEES, TRUSTEES OR RECEIVERS (FOR A DEFUNCT CORPORATION), APPOINTED WITHIN THREE YEARS FROM ITS DISSOLUTION, MAY BE PROSECUTED BEYOND THE SAID THREE-YEAR PERIOD, AND THAT, ALL OTHERS ARE DEEMED ABATED.

V

“THE ‘RESPONDENT COURT’ ERRED IN HOLDING THAT WITH THE FILING OF SPECIAL PROCEEDINGS NO. 92303 IN THE COURT OF FIRST INSTANCE OF MANILA BY FORMER DIRECTORS OF ‘PRIVATE RESPONDENT’ ON OCTOBER 23, 1973, OR, THIRTEEN YEARS AFTER ITS DISSOLUTION, A LEGAL PERSONALITY WILL BE APPOINTED TO REPRESENT THE CORPORATION.

VI

“THE ‘RESPONDENT COURT’ ERRED IN PRACTICALLY RULING THAT THE THREE-YEAR PERIOD PROVIDED FOR BY THE CORPORATION LAW WITHIN WHICH ASSIGNEES,

TRUSTEES OR RECEIVERS MAY BE APPOINTED MAY BE EXTENDED.

VII

“THE ‘RESPONDENT COURT’ ERRED IN NOT HOLDING THAT THE FAILURE OF ‘PRIVATE RESPONDENT’ OR ITS AUTHORIZED COUNSEL TO NOTIFY THE TRIAL COURT OF ITS DISSOLUTION OR OF ITS ‘CIVIL DEATH’ MAY BE CONSIDERED AS AN ABANDONMENT OF ITS CAUSE OF ACTION AMOUNTING TO A FAILURE TO PROSECUTE AND RESULTING IN THE ABATEMENT OF THE SUIT.

VIII

“THE ‘RESPONDENT COURT’ ERRED IN RECOGNIZING THE PERSONALITY OF COUNSEL APPEARING FOR ‘PRIVATE RESPONDENT’ DESPITE HIS ADMISSION THAT HE DOES NOT KNOW THE ‘PRIVATE RESPONDENT’ NOR HAS HE MET ANY OF ITS DIRECTORS AND OFFICERS.

IX

“THE ‘RESPONDENT COURT’ ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT HOLDING IN FAVOR OF THE ‘PRIVATE RESPONDENT’.

X

“THE ‘RESPONDENT COURT’ ERRED IN MODIFYING THE TRIAL COURT’S DECISION AND HOLDING EVEN THE CONJUGAL PARTNERSHIP OF PETITIONERS JOINTLY AND SEVERALLY LIABLE FOR THE OBLIGATION ADJUDGED AGAINST PETITIONER-HUSBAND, CARLOS GELANO.”

The main issue raised by petitioner is whether a corporation, whose corporate life had ceased by the expiration of its terms of existence, could still continue prosecuting and defending suits after its dissolution and beyond the period of three (3) years provided for under Act No. 1459, otherwise known as the Corporation Law, to

wind up its affairs, without having undertaken any step to transfer its assets to a trustee or assignee.

The complaint in this case was filed on May 29, 1959 when private respondent Insular Sawmill, Inc. was still existing. While the case was being tried, the stockholders amended its Articles of Incorporation by shortening the term of its existence from December 31, 1959 to December 31, 1960, which was approved by the Securities and Exchange Commission.

In American corporate law, upon which our Corporation Law was patterned, it is well settled that, unless the statutes otherwise provide, all pending suits and actions by and against a corporation are abated by a dissolution of the corporation.^[5] Section 77 of the Corporation Law provides that the corporation shall “be continued as a body corporate for three (3) years after the time when it would have been dissolved, for the purpose of prosecuting and defending suits by or against it,” so that, thereafter, it shall no longer enjoy corporate existence for such purpose. For this reason, Section 78 of the same law authorizes the corporation, “at any time during said three years to convey all of its property to trustees for the benefit of members, stockholders, creditors and other interested,” evidently for the purpose, among others, of enabling said trustees to prosecute and defend suits by or against the corporation begun before the expiration of said period.^[6] Commenting on said sections, Justice Fisher said:

“It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but that there is no time limited within which the trustees must complete a liquidation placed in their hands. It is provided only (Corp. Law, Sec. 78) that the conveyance in the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate where it ceased to be an entity capable of suing or being sued (7 R.C.L. Corps., Par. 750); but trustees to whom the corporate assets have been conveyed pursuant to the authority of Section 78 may

sue and be sued as such in all matters connected with the liquidation. By the terms of the statute the effect of the conveyance is to make the trustees the legal owners of the property conveyed, subject to the beneficial interest therein of creditors and stockholders.”^[7]

When Insular Sawmill, Inc. was dissolved on December 31, 1960, under Section 77 of the Corporation Law, it still has the right until December 31, 1963 to prosecute in its name the present case. After the expiration of said period, the corporation ceased to exist for all purposes and it can no longer sue or be sued.^[8]

However, a corporation that has a pending action and which cannot be terminated within the three-year period after its dissolution is authorized under Section 78 to convey all its property to trustees to enable it to prosecute and defend suits by or against the corporation beyond the three-year period. Although private respondent did not appoint any trustee, yet the counsel who prosecuted and defended the interest of the corporation in the instant case and who in fact appeared in behalf of the corporation may be considered a trustee of the corporation at least with respect to the matter in litigation only. Said counsel had been handling the case when the same was pending before the trial court until it was appealed before the Court of Appeals and finally to this Court. We therefore hold that there was a substantial compliance with Section 78 of the Corporation Law and as such, private respondent Insular Sawmill, Inc. could still continue prosecuting the present case even beyond the period of three (3) years from the time of its dissolution.

From the above quoted commentary of Justice Fisher, the trustee may commence a suit which can proceed to final judgment even beyond the three-year period. No reason can be conceived why a suit already commenced by the corporation itself during its existence, not by a mere trustee who, by fiction, merely continues the legal personality of the dissolved corporation should not be accorded similar treatment allowed — to proceed to final judgment and execution thereof.

The word “trustee” as used in the corporation statute must be understood in its general concept which could include the counsel to

whom was entrusted in the instant case, the prosecution of the suit filed by the corporation. The purpose in the transfer of the assets of the corporation to a trustee upon its dissolution is more for the protection of its creditor and stockholders. Debtors like the petitioners herein may not take advantage of the failure of the corporation to transfer its assets to a trustee, assuming it has any to transfer which petitioner has failed to show, in the first place. To sustain petitioners' contention would be to allow them to enrich themselves at the expense of another, which all enlightened legal systems condemn.

The observation of the Court of Appeals on the issue now before Us that:

“Under Section 77 of the Corporation Law, when the corporate existence is terminated in any legal manner, the corporation shall nevertheless continue as a body corporate for three (3) years after the time when it would have been dissolved, for the purpose of prosecuting and defending suits by or against it. According to authorities, the corporation ‘becomes incapable of making contracts or receiving a grant. It does not, however, cease to be a body corporate for all purposes.’ In the case of Pasay Credit and Finance Corp. vs. Isidro Lazaro and others, 46 OG (11) 5528, this Court held that ‘a corporation may continue a pending litigation even after the lapse of the 3-year period granted by Section 77 of Act 1459 to corporation subsequent to their dissolution to continue its corporate existence for the purpose of winding up their affairs and settling all the claims by and against same.’ We note that the plaintiff Insular Sawmill, Inc. ceased as a corporation on December 30, 1960 but the case at bar was instituted on May 29, 1959, during the time when the corporation was still very much alive. Accordingly, it is our view that ‘any litigation filed by or against it instituted within the period, but which could not be terminated, must necessarily prolong that period until the final termination of said litigation as otherwise corporations in liquidation would lose what should justly belong to them or would be exempt from the payment of just obligations through a mere technicality, something that courts should prevent’ (Philippine Commercial Laws by Martin, 1962 Ed., Vol. 2, p. 1716).”

merits the approval of this Court.

The last two assigned errors refer to the disposition of the main case. Petitioners contend that the obligations contracted by petitioner Carlos Gelano from November 19, 1947 until August 18, 1950 (before the effectivity of the New Civil Code) and from December 26, 1950 until July 14, 1952 (during the effectivity of the New Civil Code) were his personal obligations, hence, petitioners should not be held jointly and severally liable. As regards the said issues, suffice it to say that with the findings of the Court of Appeals that the obligation contracted by petitioner-husband Carlos Gelano redounded to the benefit of the family, the inevitable conclusion is that the conjugal property is liable for his debt, pursuant to paragraph 1, Article 1408, Civil Code of 1889^[9] which provision incidentally can still be found in paragraph 1, Article 161 of the New Civil Code.^[10] Only the conjugal partnership is liable, not joint and several as erroneously described by the Court of Appeals, the conjugal partnership being only a single entity.

WHEREFORE, with the modification that only the conjugal partnership is liable, the appealed Decision is hereby affirmed in all other respects. Without pronouncement as to costs.

SO ORDERED.

Makasiar, Fernandez, and Guerrero, JJ., concur.
Teehankee, C.J., (Chairman), concurs in the result.
Melencio-Herrera, J., took no part.

[1] pp. 81-82, Rollo.

[2] p. 96, Rollo.

[3] pp. 144-148, Rollo.

[4] p. 161, Rollo.

[5] 16 Fletcher p. 896; 1 C.J.S., p. 140.

[6] National Abaca & Other Fibers Corp. vs. Pore, 2 SCRA 989.

[7] Philippine Law of Stock Corporations, 1929 ed., pp. 390-391; see also Sumera vs. Valencia, 67 Phil. 721.

[8] Fisher, 1929 ed., p. 386.

[9] "Art. 1408. The conjugal partnership shall be liable for:

“1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in cases in which she can legally bind the partnership.”

[10] “Art. 161. The conjugal partnership shall be liable for:

1. All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in cases where she may legally bind the partnership.”

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