



Republic of the Philippines
Supreme Court
 Bacolod City

FIRST DIVISION

**LEODEGARIO D.
 BOONGALING,**

Petitioner,

G.R. No. 214259

Present:

GESMUNDO, C.J.,
Chairperson,
 HERNANDO,
 ZALAMEDA
 LOPEZ, M.,* and
 MARQUEZ,** JJ.

- versus -

**BANCO SAN JUAN, represented
 by its President JOBEL CHUA,**
Respondent.

Promulgated:

NOV 29 2022

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DECISION

HERNANDO, J.:

This resolves the Petition for Review on *Certiorari*¹ filed by petitioner Leodegario D. Boongaling (Boongaling) to assail the February 17, 2014 Decision² and the August 20, 2014 Resolution³ of the Court of Appeals (CA) in

* Designated additional Member per Raffle dated April 26, 2022 vice Associate Justice Ricardo R. Rosario, who inhibited due to prior action in the Court of appeals.

** On official business.

¹ *Rollo*, pp. 10-25.

² Id. at 26-30. Penned by Associate Justice Ricardo R. Rosario (now a Member of this Court) and concurred in by Associates Justices Amelita G. Tolentino and Leonica Real-Dimagiba.

³ Id. at 35-36.

CA-G.R. CV No. 99360. The CA reversed and set aside the April 19, 2012 Order⁴ of the Regional Trial Court (RTC) of Baguio City, Branch 5, which rendered judgment in favor of Boongaling and his co-plaintiff, Fortunato Diate (Diate) on the basis of the pleadings.

The Antecedent Facts

On December 5, 2021, Boongaling and Diate filed a Complaint⁵ for sum of money and damages against Banco San Juan, which was amended on January 27, 2012.⁶ In their complaint, Boongaling and Diate alleged that they are depositors of Banco San Juan under Savings Account No. 011-24-000087-4, that their passbook reflected a balance of ₱574,313.93 as of December 9, 2008, and that they never withdrew money from the account after said date.⁷

On October 27, 2010, they received a letter from the bank informing them that their account has become dormant and requesting that they activate their account. They went to Banco San Juan's Baguio City branch to activate their account but learned that their account only contained ₱16,000.00 instead of their expected balance of ₱574,313.93. Upon investigation, they learned that two former employees of the bank had stolen money from the bank by forging the signatures of its depositors.⁸

Thus, Diate and Boongaling alleged in their complaint that the loss of their money from their savings account was caused by the two former employees who falsified withdrawal slips for the amounts of ₱80,000.00, withdrawn on April 14, 2008, and ₱500,000.00, withdrawn on April 30, 2008. Both deposit slips indicated that the withdrawing depositor was Boongaling, who also supposedly received the money withdrawn. They averred that Boongaling's signature was forged and the bank should have noticed the same. To show that the withdrawals were spurious, they claimed that the withdrawals were made before their savings account became dormant, and that they made five transactions after the first spurious withdrawal and their passbook was updated each time, but the spurious transactions were never recorded.⁹

Boongaling and Diate also averred that the bank had filed a criminal complaint for Qualified Theft against its two erring employees, which revealed that the unauthorized withdrawals and forgeries started in 2006. They insisted

⁴ Id. at 69-78; Penned by Presiding Judge Antonio M. Esteves.

⁵ Id. at 28.

⁶ Id. at 37-48.

⁷ Id. at 41 and 49.

⁸ Id. at 41-42 and 50.

⁹ Id. at 41-42 and 51.

that despite such knowledge, the bank never informed them of the possibility that their account might have been among those that the offenders stole from.¹⁰ In an effort to appease them, they were made to fill up a complaint form with a promise to facilitate reinstatement of their account and interests due within 30 days; however, more than five months passed without a favorable action from the bank.¹¹

On August 1, 2011, they made a formal demand on the bank to restore their account to its correct balance of ₱574,713.93.¹² In response, the bank informed them that it had referred the case to the National Bureau of Investigation (NBI), considering that as far as bank records are concerned, the questioned withdrawals are genuine and correct.¹³ It was only in the said letter when the bank required them to submit their specimen signatures for NBI analysis.¹⁴

While the bank admitted in its Answer¹⁵ that two of its employees made unauthorized withdrawals from its client's accounts in 2009 through a series of falsifications and forgeries, it alleged that it immediately informed all depositors of the situation through several press releases and announcements, and that it sent written notices personally to all of its depositors. The bank also claimed that it paid all affected accounts within two to three months from the discovery of the fraudulent scheme of the bank employees and the publication thereof. Thereafter, the Bank flagged that most of the claims that came after the first two to three months were made by unscrupulous bank holders who intended to profit from the bank by disowning withdrawals which they legitimately made.¹⁶

The bank denied Boongaling and Diate's allegations that the latter's signatures were forged to facilitate the unauthorized withdrawals on April 14, 2008 and April 30, 2008, that the last maintaining balance of the latter's account as of December 9, 2008 was ₱574,313.93, and plaintiffs did not withdraw any amount from the account after the said date.¹⁷ It maintained that plaintiffs have no cause of action against them since as far as bank records are concerned, the withdrawals, withdrawal slips, and Boongaling and Diate's signatures on the withdrawal slips in question were genuine, and that taking into consideration

¹⁰ Id. at 42-43.

¹¹ Id. at 43-44.

¹² Id. at 55-56.

¹³ Id. at 43, 53.

¹⁴ Id. at 43.

¹⁵ Id. at 29-30.

¹⁶ Id. at 58-59.

¹⁷ Id. at 41-42.

such withdrawals plus the deduction of dormant account charges, the correct balance of Diate and Boongaling's account was ₱15,807.49.¹⁸

Ruling of the Regional Trial Court

On February 14, 2012, Diate and Boongaling moved for a judgment on the pleadings on the ground that the bank's Answer failed to tender an issue and contained mere denials.¹⁹ In its April 19, 2012 Order, the trial court granted the motion and ordered the bank to pay a total of ₱1,674,313.93 in damages to the plaintiffs based on the Complaint and Answer on record. After noting that the two subject withdrawals were not reflected in the copy of Boongaling and Diate's passbook that was annexed to the Complaint, and that the second withdrawal occurred after office hours based on the copy of the deposit slip annexed to the Complaint, and observing a visual disparity between Boongaling's signature in the Complaint and the signature in the copy of the deposit slips, the trial court concluded that the bank was negligent and in bad faith in allowing a withdrawal without the passbook by a person other than the depositor, the presentation of a forged withdrawal slip by an unauthorized person, and the non-recording of the withdrawal in the passbook being presented for updating by the plaintiffs.²⁰

The bank moved for reconsideration, which was denied in the trial court's May 11, 2012 Order.²¹ Aggrieved, the bank appealed the case to the CA. Thereafter, upon petitioner and Diate's motion, the trial court issued a writ of execution for the judgment award and required plaintiffs to post a bond, which they did. The bank requested to post a superdeseas bond to stay a writ of execution, but the trial court denied the bank's motion.²²

Ruling of the Court of Appeals

In its February 17, 2014 Decision,²³ the appellate court reversed the Order granting the complaint based on the pleadings, and remanded the case records for trial on the merits:

WHEREFORE, the *Order*, dated 19 April 2012, of the Regional Trial Court, Branch V, Baguio City in Civil Case No. 7521-R, for Sum of Money and Damages, granting Judgment on the Pleadings and ordering the payment of

¹⁸ Id. at 60.

¹⁹ Id. at 65-68.

²⁰ Id. at 72-74.

²¹ Id. at 79.

²² Id. at 30-31.

²³ Id. at 26-30.

P1,674,313.93 is **REVERSED and SET ASIDE**. The records of the case are **REMANDED** to the court of origin for the trial on the merits and reception of both parties' evidence. The court of origin is **DIRECTED** to handle the proceedings with utmost **DISPATCH**.

*SO ORDERED.*²⁴

In so ruling, the appellate court observed that the trial court erred in granting judgment on the pleadings considering that the pleadings tendered issues and Boongaling and Diate had yet to establish their claim through a preponderance of evidence.²⁵ Petitioner filed a motion for reconsideration, which was denied by the CA in its August 20, 2014 Resolution.²⁶ Hence, this Petition.²⁷

Petitioner alleges that the instant case should be dismissed since: (a) the due enforcement and full satisfaction of the writ of execution has rendered the case moot and academic,²⁸ (b) respondent committed forum shopping,²⁹ (c) the trial court correctly made a rendition of judgment on the basis of the pleadings since respondent's Answer did not tender any issue and it admitted all material allegations, and (d) assuming that the pleadings tendered an issue, the trial court's order is valid as a summary judgment since any issues raised were sham and fictitious.³⁰

For its part, respondent avers that: (a) the trial court erred in rendering judgment on the pleadings considering the Answer tendered an issue, since the bank denied several material allegations in the complaint such as the claim that the remaining balance is ₱574,313.93, the claim that the withdrawal slips were forged, and the claim that there was a cover-up by the bank, (b) the enforcement of the writ of execution and the payment made by the bank in compliance with the same did not moot nor constitute an abandonment of the appeal, nor does it bar the continuance thereof, and (c) the bank did not commit forum shopping since it assailed different orders of the RTC of different nature and character – one pertaining to the interlocutory orders of the RTC, *i.e.*, the grant of the motion for writ of execution pending appeal and the denial of the bank's motion for determination of supersedeas bond, and the other in the nature of a final order and judgment which disposed of the case.³¹

²⁴ Id. at 33-34.

²⁵ Id. at 31-33.

²⁶ Id. at 35-36.

²⁷ Id. at 29-31, 301-329.

²⁸ Id. at 16-18.

²⁹ Id. at 18-20.

³⁰ Id. at 20-22.

³¹ Id. at 99-108.

Issues

Considering the foregoing, the Court is called to resolve the following issues: (a) whether the case should be dismissed on the ground of forum shopping, (b) whether enforcement of the trial court's judgment rendered the case moot, and (c) whether the CA erred in reversing the trial court's judgment on the pleadings and remanding the case for trial on the merits.

Our Ruling

The Court denies the petition.

A case becomes moot when it ceases to present a justiciable controversy such that there is no actual substantial relief to which a party would be entitled to, and which would be negated by the dismissal of the petition. Courts will not determine questions that have become moot because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.³² Here, contrary to petitioner's averment, respondent's act of complying with the writ of execution did not render its appeal moot. It is beyond cavil that litigants who receive an unfavorable judgment may seek relief by appealing such judgment within the period and in the manner prescribed under our procedural rules notwithstanding the possibility of execution of such judgment pending appeal, and such relief may be granted if the appeal is impressed with merit. It is unreasonable to consider a party's compliance with the writ of execution as an abandonment of a party's appeal, or render a party's appeal as moot, since a judgment may be executed even pending appeal if the trial court finds good reasons therefor, and a party is essentially compelled to comply with the judgment through a writ of execution.³³

Moreover, respondent did not commit forum shopping when it appealed the trial court's judgment on the pleadings and subsequently filed a petition for *certiorari* against the trial court's order allowing execution pending appeal. 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*. There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another. They are the following: (a) identity of

³² *Jorgenetics Swine Improvement Corp. v. Thick & Thin Agri-Products, Inc.*, G.R. Nos. 201044 & 222691, May 5, 2021.

³³ *Elnar v. Santos*, 106 Phil. 28, 34 (1959).

parties, or at least such parties that represent the same interests in both actions, (b) identity of rights or causes of action, and (c) identity of reliefs sought. Forum shopping does not exist where different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought.³⁴

In line with the foregoing, parties are not guilty of forum shopping when in one petition they question the order granting the motion for execution pending appeal and, in a regular appeal before the appellate court, they assail the decision on the merits.³⁵ In the instant case, respondent's petition for *certiorari* merely questions the propriety of execution pending appeal, which was granted through an interlocutory order of the trial court; it does not assail the trial court's final order on the merits, which is the subject of respondent's appeal in the court *a quo*. In fine, respondent is not guilty of forum shopping since the rights asserted, the issues raised and the reliefs prayed for by the respondent in its petition for *certiorari* are different from those in its appeal from the judgment on the pleadings of the trial court.

Finally, the Court agrees with the CA that the rendition of a judgment on the pleadings by the trial court was improper.

In civil cases, the burden of proof rests upon the plaintiff who must establish their case by preponderance of evidence. Preponderance of evidence is the evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence.³⁶ In the same vein, forgery as alleged by plaintiffs in this case cannot be presumed and must be proved by clear, positive, and convincing evidence. Parties who allege forgery have the burden to establish their case by a preponderance of evidence.³⁷

Nevertheless, the rendition of a judgment on the pleadings is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. It is a form of judgment that is exclusively based on the submitted pleadings without the introduction of evidence since the factual issues are uncontroverted.³⁸ Section 1, Rule 34 of the Rules of Civil Procedure reads:

³⁴ *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, G.R. No. 219340, April 28, 2021.

³⁵ *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415, 443-446 (2004).

³⁶ *Spouses Ponce v. Aldanese*, G.R. No. 216587, August 4, 2021.

³⁷ *Seming v. Alamag*, G.R. No. 202284, March 17, 2021.

³⁸ *Government Service Insurance System v. Prudential Guarantee and Assurance, Inc.*, 721 Phil. 740, 756-757 (2013).

Sec. 1. *Judgment on the pleadings.* — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading x x x x.

An answer would fail to tender an issue if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all. If an answer specifically denies the material averments of the complaint and/or asserts affirmative defenses, *i.e.*, allegations of new matters which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff, a judgment on the pleadings would be improper.³⁹

Respondent's Answer tendered several issues, namely whether Boongaling's and Diate's signatures were forged by the bank's former employees to facilitate two unauthorized withdrawals in the amount of ₱580,000.00 from their account, and whether the bank was negligent in the handling of their deposit. While the bank admitted that Boongaling and Diate had an account with them, and that two former employees made several unauthorized withdrawals in some of the bank's accounts, it categorically denied that Boongaling and Diate's account was affected by the same, and further denied that the two withdrawals in their account amounting to ₱580,000.00 were unauthorized or covered by forged deposit slips. Moreover, respondent clearly contests the opposing party's version of facts and avers that as far as bank records are concerned, the withdrawals, the withdrawal slips used to withdraw from the bank, and the signatures of Boongaling and Diate therein are genuine, and their remaining balance is ₱15,807.49.

In view of the issues raised by respondent regarding the allegations of forgery and negligence, the trial court erred in rendering judgment solely on the basis of the pleadings and its attachments. It should have required Boongaling and Diate to establish their case by a preponderance of evidence, and allowed respondent to object to the admissibility of their evidence and to present its own evidence to refute the latter's claims. The bank's admission that it was defrauded by two of its employees by the forgery of some of their depositors' signatures did not erase the opposing party's obligation to prove their case by a preponderance of evidence and establish that they were among those depositors whose signatures were forged. Unfortunately, the trial court's rendition of judgment on the pleadings prematurely foreclosed the parties' opportunity to do so. A judgment on the pleadings was not called for and prevented a fair and full resolution of the controversy.

³⁹ *Adolfo v. Adolfo*, 756 Phil. 325, 342 (2015).

Petitioner's contention that the trial court's judgment in his favor should be considered a valid summary judgment is also untenable. The rendition of a summary judgment is sanctioned only if the pleadings does not tender a genuine issue, *i.e.*, an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious and does not constitute a genuine issue for trial.⁴⁰ When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for.⁴¹ We have differentiated a summary judgment and a judgment on the pleadings, thus:

Simply stated, what distinguishes a judgment on the pleadings from a summary judgment is the presence of issues in the Answer to the Complaint. When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate. **On the other hand, when the Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, a summary judgment is proper provided that the issue raised is not genuine.** "A 'genuine issue' means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial."⁴² (Emphasis supplied)

A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole.⁴³ Here, rather than being sham or fictitious issues, whether Boongaling and Diate signatures were forged to facilitate unauthorized withdrawals from their account, and whether the bank was negligent in the handling of their deposit involve factual issues that should be resolved through a full-blown trial on the merits.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The February 17, 2014 Decision and the August 20, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 99360 are **AFFIRMED**.

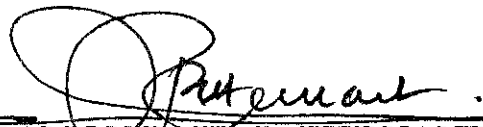
⁴⁰ *Iloilo Jar Corporation v. Comglasco Corporation*, 803 Phil. 567, 576-577 (2017).

⁴¹ *Adolfo v. Adolfo*, supra at 343.

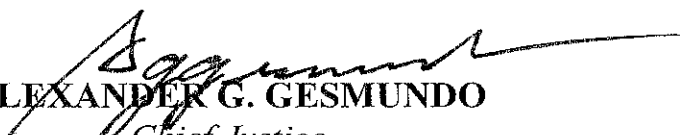
⁴² *Iloilo Jar Corporation v. Comglasco Corporation*, supra.

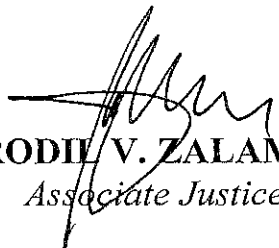
⁴³ *Commission of Internal Revenue v. Standard Insurance Co., Inc.*, supra note 34.

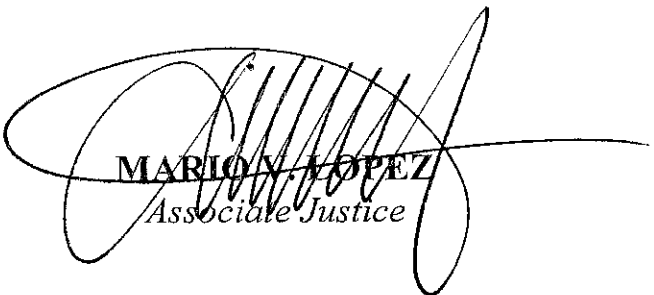
SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

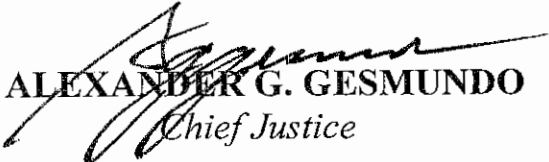

RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice

On official business
JOSE MIDAS P. MARQUEZ
Associate Justice

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