Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FLORPINA BENAVIDEZ,
Petitioner,

- versus -

NESTOR SALVADOR,
Respondent.

G.R. No. 173331

Present:

VELASCO, JR., *J., Chairperson.*
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

December 11, 2013

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D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* assailing the November 22, 2005 Decision[1] and the June 8, 2006 Amended Decision[2] of the Court of Appeals *(CA),* in CA-G.R. CV No. 73487, which affirmed and modified the June 1, 2001 Decision[3] of the Regional Trial Court, Branch 74, Antipolo City *(RTC-Antipolo)* in Civil Case No. 00-5660.

The Facts:

Sometime in February 1998, petitioner Florpina Benavidez *(Benavidez)* approached and asked respondent Nestor Salvador *(Salvador)* for a loan that she would use to repurchase her property in Tanay, Rizal which was foreclosed by the Farmers Savings and Loan Bank, Inc. *(Farmers*

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[1] *Rollo*, pp. 27-37. Penned by Associate Justice Danilo B. Pine with Associate Justice Marina L. Buzon and Associate Justice Vicente S.E. Veloso, concurring.
[2] Id. at 38-42. Penned by Associate Justice Marina L. Buzon with Associate Justice Lucas P. Bersamin and Vicente S.E. Veloso, concurring.
[3] Id. at 24-30. Penned by Judge Francisco A. Querubin.

Savings). After inspecting the said property, Salvador agreed to lend the money subject to certain conditions. To secure the loan, Benavidez was required to execute a real estate mortgage, a promissory note and a deed of sale. She was also required to submit a special power of attorney *(SPA)* executed and signed by Benavidez's daughter, Florence B. Baning *(Baning),* whom she named as the vendee in the deed of absolute sale of the repurchased property. In the SPA, Baning would authorize her mother to obtain a loan and to constitute the said property as security of her indebtedness to Salvador.

Pursuant to the agreement, Salvador issued a manager's check in favor of Benavidez in the amount of One Million Pesos (₱1,000,000.00) and released Five Hundred Thousand Pesos (₱500,000.00) in cash. For the loan obtained, Benavidez executed a promissory note, dated March 11, 1998.

Benavidez, however, failed to deliver the required SPA. She also defaulted in her obligation under the promissory note. All the postdated checks which she had issued to pay for the interests were dishonored. This development prompted Salvador to send a demand letter with a corresponding statement of account, dated January 11, 2000. Unfortunately, the demand fell on deaf ears which constrained Salvador to file a complaint for sum of money with damages with prayer for issuance of preliminary attachment.

On May 4, 2000, Benavidez filed a motion to dismiss on the ground of *litis pendentia*. She averred that prior to the filing of the case before the RTC-Antipolo, she had filed a *Complaint for Collection for Sum of Money, Annulment of Contract and Checks with Prayer for Preliminary Injunction and Temporary Restraining Order* against Salvador; his counsel, Atty. Nepthalie Segarra; Almar Danguilan; and Cris Marcelino, before the Regional Trial Court, Branch 80, Morong, Rizal *(RTC-Morong).* The motion to dismiss, however, was denied by RTC-Antipolo on July 31, 2000. On September 15, 2000, Benavidez filed her answer with counterclaim. A pre-trial conference was scheduled on May 2, 2001 but she and her counsel failed to appear despite due notice. Resultantly, upon motion, Salvador was allowed by the trial court to present evidence *ex parte.*

On June 1, 2001, RTC-Antipolo decided the subject case for Salvador. It found that indeed Benavidez obtained a loan from Salvador in the amount of ₱1,500,000.00. It also noted that up to the time of the rendition of the judgment, she had failed to settle her obligation despite having received oral and written demands from Salvador. Also, the trial court pointed out that the evidence had shown that as of January 11, 2000, Benavidez's obligation had

already reached the total amount of ₱4,810,703.21.[4] Thus, the *fallo* of the said decision reads:

> WHEREFORE, in view of the foregoing premises, defendant is hereby directed to pay plaintiff the following:
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> 1. The amount of ₱4,810,703.21, covering the period from June 11, 1998 to January 11, 2000, exclusive of interest and penalty charges until the said amount is fully paid;
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> 2. The amount of ₱50,000.00 as exemplary damages;
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> 3. The sum of 25% of the total obligation as and by way of attorney's fees; and,
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> 4. Cost of suit.
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> SO ORDERED.[5]

Benavidez filed a motion for reconsideration but unfortunately for her, RTC-Antipolo, in its August 10, 2001 Order,[6] denied her motion for lack of merit.

Frustrated, Benavidez appealed the June 1, 2001 Decision and the August 10, 2001 Order of RTC-Antipolo to the CA. She argued, in chief, that early on, the trial court should have dismissed the complaint for collection of sum of money filed by Salvador on grounds of *litis pendentia* and erroneous certification against forum shopping. She claimed that prior to the filing of the said complaint against her, she had already filed a complaint for the annulment of the promissory note evidencing her obligation against Salvador. According to her, there was substantial identity in the causes of action and any result of her complaint for annulment would necessarily affect the complaint for collection of sum of money filed against her. She added that Salvador never informed RTC-Antipolo about the pending case before RTC-Morong, rendering his certification on forum shopping erroneous.[7]

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[4] Id. at 106.
[5] CA *rollo*, pp. 106-107.
[6] Id. at 111.
[7] Id. at 30.

Benavidez also argued that RTC-Antipolo erred in refusing to re-open the case for pre-trial conference and disallowing her to present evidence. She added that the absence of her counsel on the scheduled pre-trial conference caused her substantial prejudice. Though she was not unmindful of the general rule that a client was bound by the mistake or negligence of her counsel, she insisted that since the incompetence or ignorance of her counsel was so great and the error committed was so serious as it prejudiced her and denied her day in court, the litigation should have been reopened to give her the opportunity to present her case.[8]

The CA was not moved.

The CA reasoned out that RTC-Antipolo did not err in allowing Salvador to present his evidence *ex-parte* in accordance with Section 5, Rule 18 of the 1997 Rules of Court.[9] Benavidez and her counsel failed to show a valid reason for their non-appearance at the pre-trial and so their absence was not excusable. Her counsel's negligence, as Benavidez cited, was not among the grounds for new trial or reconsideration as required under Section 1, Rule 37 of the Rules of Civil Procedure. The CA emphasized that well-entrenched was the rule that negligence of counsel bound his client. She was bound by the action of his counsel in the conduct of the trial. The appellate court also took note that she herself was guilty of negligence because she was also absent during the pre-trial despite due notice. Thus, Benavidez's position that the trial court should have reopened the case was untenable.[10]

With regards to the grounds of *litis pendentia* and forum shopping cited by Benavidez, the CA wrote that there was no identity of the rights asserted in the cases filed before RTC-Morong and RTC-Antipolo. The reliefs prayed for in those cases were different. One case was for the annulment of the promissory note while the other one was a complaint for sum of money. There could be identity of the parties, but all the other requisites to warrant the dismissal of the case on the ground of *litis pendentia* were wanting.[11] Thus, on November 22, 2005, the CA affirmed *in toto* the decision of RTC-Antipolo.[12]

Feeling aggrieved by the affirmance, Benavidez filed a motion for reconsideration on the ground that the same was contrary to law and jurisprudence; that *litis pendentia* existed which resultantly made his

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[8] Id. at 32.
[9] Id. at 33.
[10] Id. at 34.
[11] Id. at 31.
[12] Id. at 37.

certification on non-forum shopping untruthful; and, that her absence during the pre-trial was justified.

On June 08, 2006, the CA issued the *Amended Decision*, holding that the motion was partly meritorious. Accordingly, it modified its earlier decision by deleting the award of exemplary damages and attorney's fees because the award thereof was not supported by any factual, legal and equitable justification. Thus, the decretal portion of the Amended Decision reads:

> **WHEREFORE**, the motion for reconsideration is **PARTIALLY GRANTED.** The Decision dated November 22, 2005 is **MODIFIED** by **DELETING** the award of exemplary damages and attorney's fees.
>
> SO ORDERED. [13]

Still unsatisfied, Benavidez comes before the Court via a petition for review under Rule 45 of the Rules of Court, raising the following issues:[14]

> **1. Whether or not the present case is barred by Civil Case No. 00-05660 which is pending before the RTC-Morong, Rizal.**
>
> **2. Whether or not the case is dismissible because the certification against forum shopping was defective.**
>
> **3. Whether or not the executed promissory note is void for being unconscionable and shocking to the conscience.**
>
> **4. Whether or not the CA erred in holding that the order allowing respondent to present evidence ex-parte and submitting the case for decision is valid despite the fact that default judgment is looked upon with disfavor by this Court.**

In fine, the core issue is whether or not the present case should have been dismissed on the ground of *litis pendentia*.

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[13] Id. at 41.
[14] Id. at 15.

Benavidez argues that the outcome of the case, before RTC-Morong, where the annulment of the promissory note was sought, would have been determinative of the subject case before RTC-Antipolo where the enforcement of the promissory note was sought. If RTC-Morong would rule that the promissory note was null and void, then the case with RTC-Antipolo would have no more leg to stand on. He concludes that the requisites of *litis pendentia* were indeed present: *first,* both Benavidez and Salvador were parties to both complaints; *second,* both complaints were concerned with the promissory note; and *third,* the judgment in either of the said complaints would have been determinative of the other.[15]

Benavidez further claims that the case should have been dismissed because the certification on forum shopping which accompanied Salvador's complaint was defective. He declared therein that he was not aware of any pending case before any court similar to the one he was filing, when in truth and in fact, there was one. This fact could not be denied because summons in the case before RTC-Morong was served on him and he even filed his answer to the said complaint.[16]

Benavidez also pushes the argument that RTC-Antipolo committed an error of law when it allowed Salvador to present evidence *ex-parte* and eventually decided the case without waiting to hear her side. The trial court should have been more lenient. If there was any one to be blamed for her predicament, it should have been his counsel, Atty. Rogelio Jakosalem *(Jakosalem).* His counsel was negligent in his duties when he did not bother to file the necessary pre-trial brief and did not even appear at the pre-trial conference. He did not assist her either in filing a motion for reconsideration. Benavidez explains that Atty. Jakosalem did not appear on the scheduled pre-trial conference because he got mad at her when she refused to heed his advice to settle when the trial court granted Salvador's motion for issuance of preliminary attachment. Under the circumstances, she should have been exempted from the rule that the negligence of counsel binds the client.[17]

For her part, she failed to appear because she was then suffering from illness. Contrary to the finding of the CA, her medical certificate was not belatedly submitted. She submitted it within a reasonable period after she received the order allowing Salvador to present evidence *ex-parte* and considering the case for resolution thereafter.[18]

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[15] Id. at 17.
[16] Id. at 18.
[17] Id. at 19.
[18] Id. at 20.

The Court's Ruling

In litis pendentia, there is no hard and fast rule in determining which of the two actions should be abated

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[19]

Litis pendentia exists when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.[20]

On the other hand, 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*.[21]

There is forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.[22]

In the present controversy, the Court is of the view that *litis pendentia* exists. All the elements are present: *first*, both Benavidez and Salvador are parties in both cases; *second*, both complaints are concerned with the same promissory note; and *third*, the judgment in either case would be determinative of the other.

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[19] *Marasigan v. Chevron Phil., Inc.*, G.R. No. 184015, February 08, 2012, 665 SCRA 499, 511.
[20] *Umale v. Canoga Park Development Corporation*, G.R. No. 167246, July 20, 2011, 654 SCRA 155, 161.
[21] *Polanco v. Cruz*, G.R. No. 182426, February 13, 2009, 579 SCRA 489, 495.
[22] Id. at 495-496.

With the foregoing, which case then should be dismissed? At first glance, it would seem that Civil Case No. 00-5660 or the complaint filed with RTC-Antipolo should have been dismissed applying the "priority-in-time rule." This rule, however, is not ironclad. The rule is not applied if the first case was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. A crucial consideration is the good faith of the parties. In recent rulings, the more appropriate case is preferred and survives. In *Spouses Abines v. BPI*,[23] it was written:

> There is no hard and fast rule in determining which of the actions should be abated on the ground of *litis pendentia*, but through time, the Supreme Court has endeavored to lay down certain criteria to guide lower courts faced with this legal dilemma. As a rule, preference is given to the first action filed to be retained. This is in accordance with the maxim *Qui prior est tempore, potior est jure*. There are, however, limitations to this rule. Hence, the first action may be abated if it was filed merely to pre-empt the later action or to anticipate its filing and lay the basis for its dismissal. Thus, the *bona fide*s or good faith of the parties is a crucial element. A later case shall not be abated if not brought to harass or vex; and the first case can be abated if it is merely an anticipatory action or, more appropriately, an anticipatory defense against an expected suit – a clever move to steal the march from the aggrieved party.
>
> Another exception to the priority in time rule is the criterion of the more appropriate action. Thus, an action, although filed later, shall not be dismissed if it is the more appropriate vehicle for litigating the issues between the parties. [Underscoring supplied]

In the relatively recent case of *Dotmatrix Trading v. Legaspi*,[24] the Court had the occasion to extensively discuss the various rules and consideration in determining which case to dismiss in such situations. It included its analysis of *Abines.* Thus:

> Early on, we applied the principle of *Qui prior est tempore, potior est jure* (literally, *he who is before in time is better in right*) in dismissing a case on the ground of *litis pendentia*. This was exemplified in the relatively early case of *Del Rosario v. Jacinto* where two complaints for reconveyance and/or recovery of the same parcel of land were filed by substantially the same parties, with the second case only impleading more party-plaintiffs. The Court held that "parties who base their contention upon the same

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[23] 517 Phil. 609, 620 (2006), citing *Compania General De Tabacos De Filipinas v. Court of Appeals*, 422 Phil. 405, 425 (2001).

[24] G.R. No. 155622, October 26, 2009,604 SCRA 431.

rights as the litigants in a previous suit are bound by the judgment in the latter case." Without expressly saying so in *litis pendentia* terms, the Court gave priority to the suit filed earlier.

In *Pampanga Bus Company, Inc. v. Ocfemia*, complaints for damages arising from a collision of a cargo truck and a bus were separately filed by the owners of the colliding vehicles. The complaint of the owners of the cargo truck prevailed and the complaint of the owners of the bus had to yield, as the cargo truck owners first filed their complaint. Notably, the first and prevailing case was far advanced in development, with an answer with counterclaim and an answer to the counterclaim having been already filed, thus fully joining the issues.

In *Lamis Ents. v. Lagamon*, the first case was a complaint for specific performance of obligations under a Memorandum of Agreement, while the second case was a complaint for sums of money arising from obligations under a promissory note and a chattel mortgage, and damages. We dismissed the second case because the claims for sums of money therein arose from the Memorandum of Agreement sued upon in the first case.

Ago Timber Corporation v. Ruiz offered an insightful reason after both parties had each pleaded the pendency of another action between the same parties for the same cause. The Court ruled that the second action should be dismissed, "not only as a matter of comity with a coordinate and co-equal court (Laureta & Nolledo, Commentaries & Jurisprudence on Injunction, p. 79, citing *Harrison v. Littlefield*, 57 Tex. Div. A. 617, 619, 124 SW 212), but also to prevent confusion that might seriously hinder the administration of justice. (*Cabigao, et al. v. Del Rosario, et al.*, 44 Phil. 182)."

In all these cases, we gave preference to the first action filed to be retained. The "**priority-in-time rule,**" however, is not absolute.

In the 1956 case of *Teodoro v. Mirasol*, we deviated from the "priority-in-time rule" and applied the "**more appropriate action test**" and the "**anticipatory test.**"

The "**more appropriate action test**" **considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled.** In *Teodoro*, the lessee filed an action for declaratory relief to fix the period of the lease, but the lessor moved for its dismissal because he had subsequently filed an action for ejectment against the lessee. We noted that the unlawful detainer suit was the more appropriate action to resolve the real issue between the parties - whether or not the lessee should be allowed to continue occupying the land under the terms of the lease contract;

this was the subject matter of the second suit for unlawful detainer, and was also the main or principal purpose of the first suit for declaratory relief.

In the "**anticipatory test,**" the *bona fides* or good faith of the parties is the critical element. **If the first suit is filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed.** In *Teodoro*, we noted that the first action, declaratory relief, was filed by the lessee to anticipate the filing of the second action, unlawful detainer, considering the lessor's letter informing the lessee that the lease contract had expired.

We also applied the "more appropriate action test" in *Ramos v. Peralta*. In this case, the lessee filed an action for consignation of lease rentals against the new owner of the property, but the new owner moved to dismiss the consignation case because of the quieting of title case he had also filed against the lessee. Finding that the real issue between the parties involved the right to occupy/possess the subject property, we ordered the dismissal of the consignation case, noting that the quieting of title case is the more appropriate vehicle for the ventilation of the issues between them; the consignation case raised the issue of the right to possession of the lessee under the lease contract, an issue that was effectively covered by the quieting of title case which raised the issue of the validity and effectivity of the same lease contract.

In *University Physician Services, Inc. v. Court of Appeals*, we applied both the "more appropriate action test" and "anticipatory test." In this case, the new owner of an apartment sent a demand letter to the lessee to vacate the leased apartment unit. When the lessee filed an action for damages and injunction against the new owner, the new owner moved for the dismissal of the action for damages on account of the action for ejectment it had also filed. We noted that ejectment suit is the more appropriate action to resolve the issue of whether the lessee had the right to occupy the apartment unit, where the question of possession is likewise the primary issue for resolution. We also noted that the lessee, after her unjustified refusal to vacate the premises, was aware that an ejectment case against her was forthcoming; the lessee's filing of the complaint for damages and injunction was but a canny and preemptive maneuver intended to block the new owner's action for ejectment.

We also applied the "more appropriate action test" in the 2003 case *Panganiban v. Pilipinas Shell Petroleum Corp.*, where the lessee filed a petition for declaratory relief on the issue of renewal of the lease of a gasoline service station, while the lessor filed an unlawful detainer case against the lessee. On the question of which action should be dismissed, we noted that the interpretation of a provision in the lease contract as to when the lease would expire is the key issue that would determine the lessee's

> right to possess the gasoline service station. The primary issue - the physical possession of the gasoline station - is best settled in the ejectment suit that directly confronted the physical possession issue, and not in any other case such as an action for declaratory relief.
>
> A more recent case - *Abines v. Bank of the Philippine Islands* in 2006 - saw the application of both the "priority-in-time rule" and the "more appropriate action test." In this case, the respondent filed a complaint for collection of sum of money against the petitioners to enforce its rights under the promissory notes and real estate mortgages, while the petitioners subsequently filed a complaint for reformation of the promissory notes and real estate mortgages. We held that the first case, the collection case, should subsist because it is the first action filed and the more appropriate vehicle for litigating all the issues in the controversy. We noted that in the second case, the reformation case, the petitioners acknowledged their indebtedness to the respondent; they merely contested the amounts of the principal, interest and the remaining balance. We observed, too, that the petitioners' claims in the reformation case were in the nature of defenses to the collection case and should be asserted in this latter case.
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> Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: **(1)** the date of filing, with preference generally given to the first action filed to be retained; **(2)** whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and **(3)** whether the action is the appropriate vehicle for litigating the issues between the parties.[25] [Underscoring supplied]

In the complaint filed before RTC-Morong, Benavidez alleged, among others, that it was defendant Atty. Nepthalie Segarra *(Atty. Segarra)* who arranged the loan in the amount of ₱1,500,000.00 for her at his own initiative; that he was the one who received the amount for her on or about March 10, 1998 from defendant Salvador; that he paid Farmers Bank the amount of ₱1,049,266.12 leaving a balance of more than ₱450,000.00 in his possession; and that he made her sign a promissory note. Benavidez prayed, among others, that Atty. Segarra be ordered to give her the balance of the amount loaned and that the promissory note that Salvador allegedly executed be declared null and void because she was just duped into signing the said document through machinations and that the stipulated interest therein was shocking to the conscience. Salvador, on the other hand, filed the subject case for the collection of a sum of money before RTC-Antipolo to enforce his rights under the promissory note.

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[25] Id. at 437-442.

Considering the nature of the transaction between the parties, the Court believes that the case for collection of sum of money filed before RTC-Antipolo should be upheld as the more appropriate case because the judgment therein would eventually settle the issue in the controversy - whether or not Benavidez should be made accountable for the subject loan. In the complaint that she filed with RTC- Morong, Benavidez never denied that she contracted a loan with Salvador. Under her second cause of action, she alleged:

> SECOND CAUSE OF ACTION
>
> 11. Defendant Atty. Nepthalie Segarra arranged a loan in the amount of ONE MILLION AND FIVE HUNDRED THOUSAND (₱1,500,000.00) PESOS for plaintiff at his own initiative;
>
> 12. Defendant Atty. Nepthalie Segarra received the ₱1,500,000.00 on or about March 10, 1998 from defendant Nestor Salvador **in behalf of and for delivery to plaintiff;**
>
> 13. Defendant Atty. Nepthalie Segarra paid Farmers Bank the amount of ₱1,049,266.12 leaving a balance of more than ₱450,000.00 in his possession. A copy of the receipt evidencing payment is herewith attached as Annex "A" and made an integral part hereof;
>
> 14. Defendant Atty. Nepthalie Segarra made plaintiff sign a Promissory Note evidencing the loan of ₱1,500,000.00. A copy of said Promissory Note is herewith attached as Annex "B" and made an integral part hereof; [26] [Underscoring supplied]

From the foregoing, it is clear that there was an amount of money borrowed from Salvador which was used in the repurchase of her foreclosed property. Whether or not it was Atty. Segarra who arranged the loan is immaterial. The fact stands that she borrowed from Salvador and she benefited from it. Her insistence that the remaining balance of ₱450,000.00 of the money loaned was never handed to her by Atty. Segarra is a matter between the two of them. As far as she and Salvador are concerned, there is admittedly an obligation. Whether the promissory note was void or not could have been proven by her during the trial but she forfeited her right to do so when she and her lawyer failed to submit a pre-trial brief and to appear at the pre-trial as will be discussed hereafter.

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[26] *Rollo*, pp. 49.

At this point, to dismiss Civil Case No. 00-5660 would only result in needless delay in the resolution of the parties' dispute and bring them back to square one. This consequence will defeat the public policy reasons behind *litis pendentia* which, like the rule on forum shopping, aim to prevent the unnecessary burdening of our courts and undue taxing of the manpower and financial resources of the Judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.[27]

The failure of a party to file a pre-trial brief or to appear at a pre-trial conference shall be cause to allow the other party to present evidence ex parte.

Benavidez basically contends that she should not be made to suffer the irresponsibility of her former counsel, Atty. Jakosalem, and that the trial court should have relaxed the application of the Rules of Court, reopened the case and allowed her to present evidence in her favor.

The Court is not moved.

Section 4, Rule 18 of the Rules of Court provides that it is the duty of the parties and their counsel to appear at the pre-trial conference. The effect of their failure to appear is provided by Section 5 of the same rule where it states:

> **Sec. 5. Effect of failure to appear.**- The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. **A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.** [Emphasis supplied]

Furthermore, Section 6 thereof provides:

> Sec. 6. *Pre-trial brief*.-The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their

[27] Supra note 24, at 443.

> receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:
>
> x x x
>
> Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

From the foregoing, it is clear that the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.[28]

RTC-Antipolo then had the legal basis to allow Salvador to present evidence *ex parte* upon motion. Benavidez and her counsel were not present at the scheduled pre-trial conference despite due notice. They did not file the required pre-trial brief despite receipt of the Order. The rule explicitly provides that both parties and their counsel are mandated to appear thereat except for: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.[29] In this case, Benavidez's lawyer was already negligent, but she compounded this by being negligent herself. She was aware of the scheduled pre-trial conference, but she did not make any move to prevent the prejudicial consequences of her absence or that of her counsel. If she knew that her lawyer would not appear and could not because she was ill, she should have sent a representative in court to inform the judge of her predicament.

Also, her failure to file the pre-trial brief warranted the same effect because the rules dictate that failure to file a pre-trial brief shall have the same effect as failure to appear at the pre-trial. Settled is the rule that the negligence of a counsel binds his clients.[30] Neither Benavidez nor her counsel can now evade the effects of their misfeasance.

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[28] *Tolentino v. Laurel*, G.R. No. 181368, February 22, 2012, 666 SCRA 561, 569-570.
[29] *Durban Apartments Corp. v. Pioneer Insurance and Surety Corp*., G.R. No. 179419, January 12, 2011, 639 SCRA 441, 450.
[30] *Suico Industrial Corp. v. Lagura-Yap*, G.R. No. 177711, September 05, 2012, 680 SCRA 145, 159.

Stipulated interest should be reduced for being iniquitous and unconscionable.

This Court is not unmindful of the fact that parties to a loan contract have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983. It is, however, worth stressing that interest rates whenever unconscionable may still be declared illegal. There is nothing in said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[31] In *Menchavez v. Bermudez,*[32] the interest rate of 5% per month, which when summed up would reach 60% per annum, is null and void for being excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law.[33]

Accordingly, in this case, the Court considers the compounded interest rate of 5% per month as iniquitous and unconscionable and void and inexistent from the beginning. The debt is to be considered without the stipulation of the iniquitous and unconscionable interest rate.[34] In line with the ruling in the recent case of *Nacar v. Gallery Frames*,[35] the legal interest of 6% per annum must be imposed in lieu of the excessive interest stipulated in the agreement.

WHEREFORE, the petition is **DENIED.** The November 22, 2005 Decision and the June 8, 2006 Amended Decision of the Court of Appeals are **AFFIRMED** with **MODIFICATION**. The interest rate of 5% per month which was the basis in computing Benavidez's obligation is reduced to 6% per annum.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[31] *Castro v. Tan, et al.*, G.R. No. 168940, November 24, 2009, 605 SCRA 231, 237-238.
[32] G.R. No. 185368, October 11, 2012, 684 SCRA 168.
[33] Id. at 178-179.
[34] *Sps. Castro v. De Leon Tan,* supra note 31.
[35] G.R. No. 189871, August 13, 2013.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

MARIA LOURDES P. A. SERENO
Chief Justice