

L. G. MARQUEZ AND Z. GUTIERREZ LORA, PLAINTIFFS. L. G. MARQUEZ, PLAINTIFF AND APPELLANT, VS. FRANCISCO VARELA AND CARMEN VARELA, DEFENDANTS AND APPELLEES.

G.R. No. L-4845. December 24, 1952

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal against an order of the Court of First Instance of Manila dismissing the complaint as to plaintiff L. G. Marquez. The pertinent allegations of the complaint are as follows: that plaintiff Gutierrez Lora was authorized by defendants to negotiate the sale of their share or interest in a parcel of land on Plaza Goiti, Manila, and having met his co-plaintiff L. G. Marquez, a real estate broker, both of them agreed to work together for the sale of defendant's property; that they found a ready, willing, and able buyer, which accepted defendants' price and terms, but that thereafter defendants, without any justifiable reason, refused to carry out the sale and execute the necessary deed therefor; and that as a consequence plaintiffs failed to receive the commission which they were entitled to receive. The defendants presented a motion to dismiss the complaint as to L. G. Marquez on the ground that he has no cause of action against defendants, and this motion having been granted, plaintiff L. G. Marquez has prosecuted this appeal.

The complaint was dismissed on «the alleged ground that it states no cause of action against the defendants. Is this objection to the complaint justified? The term "cause of action" has been held to be synonymous with "right of action" (37 Words and Phrases, 642), but in the law of pleading (Code Pleading) one is distinguished from the other in that a right of action is a remedial right belonging to some person, while a cause of action is a formal statement of the operative facts that give rise to such remedial right. The one is a matter of right and depends on the substantive law, while the other is a matter of statement and is governed by the law of procedure. (Phillips, Code Pleading, section 189, page 170.)

It is not denied that Lora, if he rendered the service alleged in the complaint, would have a right to be paid compensation for the service he rendered jointly with Marquez. He acted as a broker, and a broker is entitled to a commission for his services. (Article 277, Code of Commerce; *Henry vs. Velasco*, 34 Phil, 587; *Perez de Tagle vs. Luzon Surety Co.*, 38 Off. Gaz., 1213.) There is no prohibition in law against the employment of a companion to look for a buyer; neither is it against public policy. Neither was there even any implied understanding between Lora and the defendants that no part of the compensation to which Lora would be entitled to receive could be paid to any companion or helper of Lora. Marquez's right to compensation can not, therefore, be disputed under the operative facts set forth in the complaint.

The next issue is, is there a cause of action in favor of Marquez against the defendants? From the facts alleged in the complaint, it is clear that there is a primary right in favor of Marquez (to be paid for his services even through Lora only) and a corresponding duty devolving upon the defendants (to pay for said services). Since (as alleged) defendants refuse to comply with their duty, Marquez now is entitled to enforce his legal right by an action in

court. The complaint in the case at bar, therefore, contains both the primary right and duty and the delict or wrong combined which constitute the cause of action in the legal sense as used in Code Pleading (Pomeroy, Code Remedies, section 347), and the cause of action is full and complete.

Objection to the complaint, however, is not that Marquez has no right to share in the compensation to be paid Lora, whom defendants had directly engaged, but that Marquez can not join in this action and enforce therein his rights directly against the defendants, evidently because defendants never dealt with Marquez, directly or indirectly, or, in other words, that both Marquez and his services were not known to them. The following parts of defendants' motion to dismiss show that such in fact was the objection:

This paragraph clearly shows that the authority to sell was only given to plaintiff Z, Gutierrez Lora and not to the other plaintiff L. G. Marquez. Attention is respectfully called to the word "plaintiff" used in said paragraph III and expressed in singular form to the exclusion of the other plaintiff L. G. Marquez. If the plaintiff L. G. Marquez had worked at all for the sale of the property at the instance of an invitation of his co-plaintiff Z. Gutierrez Lora, we maintain that his action if there is any is against his co-plaintiff and not against the defendants herein.

As far as the defendants are concerned in this case, plaintiff L. G. Marquez is not only a stranger in this case but also unknown to the defendants; and if he had worked at all for the sale of the defendants' share and participation in the parcels of lands referred to in the complaint, the same was made not only at his own lookout, risk and responsibility but also with no authority whatsoever. (Record on Appeal, pages 16, 17.)

The principle underlying defendants' objection is one of procedure, not of substantive law, recognized under the common law, where no one could sue for the breach of a contract who was not a party thereto, and the action allowed to be brought only in the name of the one holding the legal title. The requirement was based upon the doctrine of privity of contract.

SEC. 234. Plaintiffs in Action ex Contractu.—When an action of contract concerns only the original parties to the instrument, it is not difficult to determine who should be the plaintiff. Obviously the one seeking to enforce it is the real party in interest. At common law, no one could sue for the breach of a contract who was not a party thereto. Hence an action on contract, whether express or implied, was required to be brought in the name of the one who held the legal interest. This requirement was based upon the doctrine of privity of contract. * *

SEC. 235. Privity of Contract.—When Necessary.—It was a rule of the common law that before one may complain of another for breach of contract, there must be some direct contractual relation, or privity, between them; and this, with only a few exceptions, is a requirement of the law today. * * * (Phillips, Code Pleading, page 227.)

At common law, in order that two or more persons may join in an action upon a contract, there must be community of interest between them; that is, they must be parties to the contract and jointly interested therein. (47 C. J., 54.)

Persons subsequently admitted to the benefit of a contract, without the privity or assent of the promisor, can not join in a suit on the contract. (47 C. J., 55.)

But we did not import into this jurisdiction the common law procedure. Our original Code of Civil Procedure (Act 190) was taken mainly from the Code of Civil Procedure of California, and this in turn was based upon the Code of Civil Procedure of New York adopted in that state in 1948. Our system of pleading is Code Pleading, that system used in the states of the Union that had adopted codes of procedure. The code system of pleading adopted in substance the rules of equity practice as to parties, under which "air persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs." (Phillips, Code Pleading, section

251, page 247.) In New York and California interest in the subject matter, or in any relief growing out of the same transaction or series of transactions is sufficient to allow joinder. (Ibid., Footnote 10a, page 247.)

Under the former Code of Civil Procedure "every action must be prosecuted in the name of the real party in interest," and "all persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs," and "if any person having an interest and in obtaining the relief demanded refuses to join as plaintiff, he may be made a defendant and the fact of his interest and refusal to join to be stated in the complaint." (Section 114, Act 190.) The principle underlying the rule is that all persons having a material interest under the substantive law should be made parties, as distinguished from that of the common law which allowed only a two-sided controversy, each party to be opposed to the other. Phillips, Code Pleading, 2d ed., section 228, page 216.)

The above principles have not been changed by the reforms in the rules in 1940 and 1941. The action is still to be prosecuted in the name of the real party in interest. Under section 6 of Rule 3, "All persons in whom * * * any right to relief in respect to or arising out of the same transaction * * * is alleged to exist, whether jointly, severally, or in the alternative, may, * * * join as plaintiffs * * *, where any question of law or fact common to all such plaintiffs * * * may arise in the action; * * *" Plaintiff Marquez, in the case at bar, clearly falls under the above rule. He is entitled to be paid his commission out of the very contract of agency between Lora and the defendants; Lora and he acted jointly in rendering services to defendants under Lora's contract, and the same questions of law and fact govern their claims. The rules do not require the existence of privity of contract between Marquez and the defendants as required under the common law; all that they demand is that Marquez has a material interest in the subject of the action, the right to share in the broker's commission to be paid Lora under the latter's contract, which right Lora does not deny. This is sufficient to justify the joinder of Marquez as a party plaintiff, even in the absence of privity of contract between him and the defendants.

We find, therefore, that the complaint of Marquez was improperly dismissed. The order of dismissal is hereby reversed, with costs against defendants.

Pablo, Bengzon, Jugo, and Bautista Angelo, JJ., concur.

PARAS, C. J.:

I concur. For all practical purposes Marquez may be considered an intervenor.

DISSENTING

MONTEMAYOR, J.:

With all due respect to the learned majority opinion with its plausible arguments and citations of authorities, I believe that the complaint of Marquez against the defendants-appellees was properly dismissed. There was absolutely no contractual relation or privity of contract between Marquez and the defendants, and as far as the latter are concerned, Marquez never rendered service to them, was never authorized to render said service, and he did not exist in their realm of contracts and obligations. I reproduce with favor the two paragraphs contained in defendant's motion to dismiss and also reproduced in the majority opinion and which for purposes of reference I quote below:

"This paragraph clearly shows that the authority to sell was only given to plaintiff Z. Gutierrez Lora and not to the other plaintiff L. G. Marquez. Attention is respectfully called to the word 'plaintiff' used in said paragraph III and expressed in singular form to the exclusion of the other plaintiff L. G. Marquez. If the plaintiff L. G.

Marquez had worked at all for the sale of the property at the instance of an invitation of his co-plaintiff Z. Gutierrez Lora, we maintain that his action if there is any is against his co-plaintiff and not against the defendants herein.

"As far as the defendants are concerned in this case, plaintiff L. G. Marquez is not only a stranger in this case but also unknown to the defendant; and if he had worked at all for the sale of the defendants' share and participation in the parcels of lands referred to in the complaint, the same was made not only at his own lookout, risk and responsibility but also with no authority whatsoever. (Record on Appeal, pages 16, 17.)"

Marquez may have rendered some service in connection with the offer for sale and the supposed acceptance of said offer by the alleged prospective buyer of the property; but such service was clearly rendered at the instance of and for the benefit of his co-plaintiff Z. Gutierrez Lora. His possible interest in this case would be a share in any money that may be obtained or received by Gutierrez from the defendants as compensation for his services as broker by virtue of the contract of employment between him and the defendants, Marquez may possibly intervene in this case for he is obviously interested in the success of Gutierrez in obtaining a favorable judgment, but to proceed directly and file the claim against the defendants with whom he never contracted, who never saw him, much less employed him, he may not, in my opinion, do legally.

To sustain a litigation or defend one's self against a suit in court involves embarrassment, expenditure of time and money and vexation. A party has a right to be protected from being harassed, troubled and otherwise vexed by an action in court brought by total stranger with whom the party made defendant has never dealt with, much less had any contractual relation. In the field of torts, offenses, or violations of property rights such as forcible entry or detainer, etc. it is proper that all the persons having an interest in obtaining damages for the tort or offense committed or for any other relief should all be included as parties plaintiff against the tortfeasor, offender or the illegal occupant despite the absence of any previous contract. But in the present case the relief sought is the performance of a contract. Consequently, only those who were parties or privies to the contract can bring the action against the alleged violator of the agreement. Marquez in this case is attempting to enforce a contract entered into not between him and the defendants but between him, his co-plaintiff and defendants. To me, he has no right to do so. His right or cause of action lies against his co-plaintiff and not against the defendants. Consequently, I hold that the dismissal of the complaint as to Marquez was warranted.

Order reversed.

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