

JOSE TORRES, ET AL., PLAINTIFFS AND APPELLANTS, VS. LUIS MORALES, ET AL., DEFENDANTS AND APPELLEES.*G. R. No. L-4475. September 28, 1951*

Ponente: PARAS, C.J.

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The plaintiffs Jose Torres and Marcosa Cruz, husband and wife, filed a complaint in the Court of First Instance of Tarlac against Luis Morales and Hermenegilda Sicat, also husband and wife, alleging three causes of action. Under the first cause of action, the plaintiffs seek to recover the sum of P12,352, alleged to be due from the defendants as unpaid balance of a loan secured by the latter from the plaintiffs in April, 1949. Under the second cause of action, the plaintiffs seek to recover the sum of P15,833.30, alleged to be due from the defendants as a result of the payment by the plaintiffs, as guarantors, of a loan of P15,000 obtained in January, 1950, by the defendants from Avelino Flores which the defendants failed to pay on its date of maturity, July 15, 1950. Under the third cause of action, the plaintiffs seek to recover the sum of P10,000 as damages suffered by the plaintiffs by reason of defendants' failure to pay the loans referred to in the first and second causes of action. The Court of First Instance of Tarlac, as prayed for in plaintiffs' complaint, issued a writ of preliminary attachment against the defendants' properties, by virtue of which the defendants' house and lot covered by transfer certificate of title No. 6326 of the Register "of Deeds of Tarlac, and certain personal properties belonging to the defendants and valued at P10,110, were levied upon. On motion of the defendants, however, and after the filing of a counterbond for P10,110, the Court of First Instance of Tarlac lifted the attachment with regards to the personal properties. On September 11, 1950, the defendants filed a motion alleging that the defendant Luis Morales died on August 25, 1950, and praying that the complaint be dismissed and the writ of attachment dissolved, on the ground that the action is for the recovery of money from the conjugal partnership of Luis Morales and Hermenegilda Sicat which was automatically dissolved upon the death of the husband. In this connection, it is noteworthy that on September 1, 1950, plaintiff Jose Torres had already instituted in the Court of First Instance of Tarlac intestate proceedings of the deceased Luis Morales. In its order of October 24, 1950, the Court of First Instance of Tarlac issued an order dismissing the complaint without special pronouncement as to costs and lifting the writ of preliminary attachment. From this order the plaintiffs have appealed.

The applicable provisions are section 21, Rule 3, of the Rules of Court which states that when the action is for the recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided therefor, and section 2 of Rule 75 which requires that when the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. Under their first assignment of error, however, the plaintiffs contend that even admitting the propriety of the dismissal with respect to the first and second causes of action, the complaint should not have been dismissed as to the third cause of action, which is for the recovery of damages, in view of section 1 of Rule 88 to the effect that actions to recover damages for an injury to person or property, real or personal, may be commenced against the executor or administrator. It is very obvious that the rule cited is not

applicable, because the third cause of action alleged in appellants' complaint is merely dependent upon or a consequence of the first and second causes of action founded on the alleged unpaid indebtedness of the defendants-appellees. As a matter of fact, in alleging the third cause of action, the plaintiffs-appellants reproduced each and every allegation under the first two causes of action and averred that, as a consequence of defendants' failure to meet their obligations under said causes of action, the plaintiffs had suffered the damages sought to be recovered in the third cause of action.

In view of what has been said, it becomes unnecessary to pass upon appellants' second contention that the trial court erred in lifting the attachment.

Wherefore, the appealed order is hereby affirmed with costs of this instance against the appellants. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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