

**ASUNCION PARKER, IN HER OWN BEHALF AND AS LEGAL
GUARDIAN OF HER CHILD KATHLEEN PARKER, PETITIONER, VS.
HON. ALEJANDRO J. PANLILIO, JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA...**

G.R. No. L-4961. March 05, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition seeking to set aside the order of respondent Judge dated July 24, 1951, which suspends the trial of civil case No. 10105 of the Court of First Instance of Manila pending final determination of criminal case No. 268 of the Court of First Instance of Camarines Norte, and to compel the respondent Judge to proceed with the trial of said civil case No. 10105.

On January 16, 1950, Asuncion Parker, in her own behalf and as legal guardian of her child Kathleen Parker, filed a complaint in the Court of First Instance of Manila for the recovery of the sum of P100.000 as damages against Philippine Air Lines, Inc., based on the alleged failure of the defendant to carry safely one Richard Parker on its plane PI-C98 from Daet, Camarines Norte, to Manila. Defendant filed its answer to the complaint, which was subsequently amended, setting up a special defense that the plane PI-C98 exploded in mid-air due to "dynamite surreptitiously introduced into said air craft by criminal hands" for which crime a criminal case was filed in the Court of First Instance of Camarines Norte against the supposed guilty parties. The case was set for hearing on several date's, and the plaintiffs had presented their direct evidence, while the defendant had begun presenting its evidence.

When the case was set for the continuation of the hearing on July 19, 1951, defendant presented an oral motion for the suspension of the hearing invoking in support thereof subsection (e), Section 1, Rule 107, of the Rules of Court, which provides that no civil action arising from the same offense can be prosecuted until final judgment in the criminal proceeding has been rendered. To this motion plaintiffs interposed a vigorous objection, and after the parties had submitted their memoranda in support of their contentions, the court overruled the opposition and suspended the hearing until the final determination of the criminal case which was then pending appeal in the Supreme Court. Hence this petition for certiorari.

Petitioner contends that the respondent Judge acted with abuse of discretion in suspending the hearing of civil case No. 10105 until the final determination of the criminal case because her cause of action in the civil case is based on culpa contractual and not on the civil liability arising from the offense involved in the criminal case and it is, therefore, a mistake on the part of the respondent Judge to consider and apply in support of his action section 1, Rule 107, of the Rules of Court. On the other hand, respondents contend that "When a criminal action is instituted, the civil action for the recovery of the civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves the right to institute it separately", and that, inasmuch as the petitioner had failed to expressly reserve her right to institute

the civil action separately, she may not now institute another action under articles 1902-1910 of the Civil Code based on the act or omission complained of in the criminal action. Her right under the Revised Penal Code and the Civil Code, they contend, excludes each other. She cannot avail herself of both remedies.

We find merit in the contention that the present civil case is based upon a cause of action not arising from the civil liability involved in the criminal case instituted against the accused in the Court of First Instance of Camarines Norte. The civil case is based on alleged culpa contractual incurred by respondent Philippine Air Lines, Inc. because of its failure to carry safely the late Richard Parker to his place of destination, whereas the criminal case involves the civil liability of the accused, who bear no relation whatsoever with said entity, and are complete strangers to it. Rule 107 contemplates a case where the offended party desires to press his right to demand indemnity from the accused in the criminal case which he may assert either in the same criminal case or in a separate action. But this situation does not here obtain. The accused are complete strangers to the respondent company. The latter is not in any way involved therein. Petitioner is concerned with the civil liability of the latter, regardless of the civil liability of the accused in the criminal case. The failure, therefore, on the part of the petitioner to reserve her right to institute the civil action in the criminal case cannot in any way be deemed as a waiver on her part to institute a separate civil action against the respondent company based on its contractual liability, or on culpa aquiliana under articles 1902 to 1910 of the Civil Code.

It should be here emphasized that these two actions are separate and distinct and should not be confused one with the other. In the supposition that the one accused in the criminal case is a driver, employee, or dependent of the respondent company, the failure to reserve the right to institute a separate civil action in the criminal case would not necessarily constitute a bar to the institution of the civil action against said respondent, for the cause of action in one is different from that in the other. These are two independent actions based on distinct causes of action. This distinction is aptly stated in the *Barredo* case (*Barredo vs. Garcia and Almario*, 73 Phil. 607). This Court said: "There are two liabilities of Barredo: first, the subsidiary one because of the civil liability of the taxi driver arising from the latter's criminal negligence; and, : second, Barredo's primary liability as an employer under Article 1903. The plaintiff's were free to choose which course to take, and they preferred the second remedy. In so doing they were acting within their rights" (pp. 614-615, *id*).

"A distinction exists between the civil liability arising from a crime and responsibility for *cuasi-delitos* or culpa extra-contractual. The same negligent act causing damages may produce a civil liability arising from a crime under article 100 of the Revised Penal Code, or create an action for *cuasi-delito* or culpa extra-contractual under articles 1902-1 & 10 of the Civil Code. Plaintiffs were free to choose which remedy to enforce" (*Barredo vs. Garcia and Almario*, 78 Phil. 607).

But it cannot be denied that the present civil case is directly interwoven with the criminal case in the sense that the main issue involved in both cases is the determination of the failure of Richard Parker to reach safely his destination or the determination of the cause of his death. And this is the main reason that guided the lower court in postponing the hearing of the civil case until final judgment in the criminal case has been rendered. Inasmuch as the power to grant or refuse continuances is inherent in all courts unless expressly limited by statute (17 C.J.S. 190), and there is no showing that the lower court has abused its discretion in suspending the hearing, we find no merit in this petition for certiorari.

Wherefore, the petition is denied with costs against petitioner.

Feria, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

DISIDENTE

PABLO, M.:

La regla general es que en cuanto se haya presentado la acción criminal, debe suspenderse toda actuación en la causa civil, Regla 107, art. 1,º (c), porque generalmente la responsabilidad criminal es factor determinante de la responsabilidad civil. Pero en el caso presente, el resultado de la causa criminal no altera la responsabilidad civil de la Philippine Air Lines, Inc. Culpable o inocente el acusado, ello no cambia la responsabilidad de dicha compañía.

En el caso remoto de que no hubiere suficientes pruebas para condenar al acusado en la causa criminal, aunque es indiscutible que la explosión de la bomba fue la causa de la muerte del pasajero Richard Parker, no por ello queda la compañía relevada. La clase de actuación de su gerencia es la que, en mi opinión, determina su responsabilidad civil. No es necesario, por tanto, suspender la vista de la causa civil.

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