

**WENCESLAO PASCUAL, PLAINTIFF, VS. PILAR BAUTISTA, ET AL.,
DEFENDANTS, PILAR BAUTISTA, THIRD PARTY PLAINTIFF AND
APPELLEE, VS. MARIANO R. FLORES, THIRD PARTY DEFENDANT
AND APPELL...**

G.R. No. L-21644. May 29, 1970

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by Mariano R. Flores from the decision of the Court of First Instance of Manila in Civil Case No. 48819 entitled "Pilar Bautista vs. Mariano R. Flores", the dispositive part of which reads as follows:

"It appearing that this motion to revive the said decision, Exhibit A, was filed on November 21, 1961, or before the expiration of the ten-year period provided by law, judgment is hereby rendered and, under Article 1144, in connection with Article 1152 of the Civil Code, this Court hereby declares that the decision of the Supreme Court in G. R. No. L-6569 and G.R. No. L-6576 is hereby REVIVED.

"SO ORDERED

"Manila, Philippines, March 12, 1963."

It appears that in Civil Case No. 5203 of the Court of First Instance of Manila entitled "Wenceslao Pascual vs. Pilar Bautista, Primitivo Lovina, Nelly Montilla de Lovina and Leon Yambao", the first (appellee herein) filed, with leave of court, a third-party complaint against Mariano R. Flores (appellant herein). Having failed to answer the third-party complaint, Flores was declared in default (Rec. on appeal pp. 19-20, 40-41) and, after due trial of the whole case, the court, on March 7, 1951, rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the de-fendant Pilar Bautista, ordering the latter to return to the plaintiff the sum of P2,000.00 representing part of the rent advanced by him for the second year of the lease; to pay to the plaintiff the sum of P13,181.86 representing one-half of the cost of the improvements and repairs made by the plaintiff on the fishpond; and against Pilar Bautista and the spouses Primitivo Lovina and Nelly Montilla de Lovina, ordering them to pay jointly and severally to the plaintiff the sum of Twenty thousand two hundred fifty pesos (P20,250.00) representing the value of the fish at the time the plain-tiff was dispossessed of the fishpond, and the costs. Likewise judgment is hereby rendered in favor of the defendant Pilar Bautista as third-party plaintiff and against Mariano R. Flores, as third-party defendant, for the sums of Five hundred thousand pesos (P500,000.00) as liquidated damages and Fifty thousand pesos (P50,000.00) for attorney's fees in accordance with her contract with him embodied in the afore-said 'Memorandum of Agreements,' with costs a-against said Mariano R. Flores. Plaintiff's claim for exemplary damages and attorney's fees, Pilar Bautista's counterclaim and cross-claim, and the spouses Lovina's counter cross-claim are hereby dismissed. Defendant Leon S. Yambao is absolved from all liability under the complaint and cross-claim."

All the parties above-mentioned, except the third-party defendant Flores, appealed from the above decision to the

Court of Appeals (CA-G.R. 7878-R), appellee Pilar Bautista, from the portions thereof adverse to her and in favor of the plaintiff. In its decision of February 16, 1953, the Court of Appeals modified the appealed decision "by eliminating from it the award of damages in favor of Wenceslao Pascual against Pilar Bautista and Primitivo Lovina and Nelly Montilla de Lovina, as solidary debtors; and substituting, in its stead, an award in favor, of Wen-ceslao Pascual in the total sum of P15,181.86, to be paid by Pilar Bautista alone. In all other respects the judgment of the Court below is affirmed, without pronouncement as to costs". (See page 61 of the Record on Appeal). Not satisfied with the result, Pilar Bautista and Wenceslao Pascual appealed to Us (G. R. Nos. L-6569 and L-6576), but on April 18, 1956, We affirmed the decision of the Court of Appeals. On June 6, 1957, our decision was entered by the Clerk of Court of the Court of First Instance of Manila in the entry book of his office.

On June 3, 1957 Pilar Bautista secured the corresponding writ to execute the decision rendered in her favor in Civil Case No. 5203 as third-party plaintiff therein against third-party defendant Flores, but the writ was later returned unsatisfied. Thereafter she obtained several alias writs of execution against the same party, the latest having been issued on April 17, 1961, but they were likewise returned unsatisfied. On May 4, 1961, she filed a petition for the examination under oath of her judgment debtor (Flores) alleging that the latter had fraudulently disposed of his properties, and, on May 18 of the same year, the court ordered said judgment debtor to appear before it for examination under oath on June 5, 1961. Upon petition of Flores, however, the court, on June 24, 1961, set aside its order for his examination as well as the writ of execution then outstanding, on the ground that "more than ten years had already elapsed since the judgment against third-party defendant Mariano R. Flores and in favor of third-party plaintiff was entered, so that no writ of execution of said judgment can now be issued (See. 6, Rule 39 of the Rules of Court)". On August 29, 1961 appellee Bautista filed a petition for relief from said order of June 24, 1961, but the same was denied by the court, and although on November 15, 1961 she filed a notice of appeal from said order of denial, no appeal therefrom appears to have been actually perfected.

On November 21, 1961, appellee Pilar Bautista filed an action in the Court of First Instance of Manila (Civil Case No. 48819) for the revival of the final judgment here-tofore mentioned rendered in Civil Case No. 5203 against appellant Flores. In his answer to the complaint, the latter alleged that said judgment had already prescribed pursuant to Sec. 6, Rule 39, Rules of Court, and Article 1144(3) of the New Civil Code. After trial, the lower court rendered the appealed judgment.

In his brief appellant submits for our consideration ten errors allegedly committed by the trial court, but brushing aside all non-essential issues, We believe that the fate of the present appeal depends upon the following question: Which judgment, that of the Court of First Instance of Manila rendered in Civil Case No. 5203 on March 7, 1951, or that of this Court in G. R. Nos. L-6569 and L-6576 rendered on April 18, 1956 (affirming the decision of the Court of Appeals in CA-G. R. L-7878 which, in turn, modified the aforementioned decision of the Court of First Instance of Manila) could be revived as against appellant Flores? If it is the former, it is clear that the action to revive it (Civil Case No. 48859) filed with the same Court came too late on November 21, 1961, bearing in mind that the decision sought to be revived - a judgment by default as far as the third party defendant Flores was concerned - was rendered on March 7, 1951. On the other hand, if it was our decision in G. R. Nos. L-6569 and L-6576 promulgated on April 18, 1956, the action for revival was timely filed, as held by the lower court.

In connection with the above question, two undisputed facts must be borne in mind. The first is that from the decision of the Court of First Instance of Manila in Civil Case No. 5203 rendered on March 7, 1951, all the parties thereto, except the third-party defendant therein, Flores, appealed to the Court of Appeals. The latter, therefore, was not affected at all neither by the decision rendered by the Court of Appeals nor by the one subsequently rendered by this Court. The second is that the decision of the Court of First Instance of Manila in Civil Case No.

5203 was, as far as Flores was concerned, a judgment by default which, under the law then in force, was not appealable and was deemed to be immediately executory. (Lim Toco vs. Go Fay 80 Phil. 166; Rodrigo vs. Cabrera, G. R. L-6074, September 16, 1954, construing the effects of a judgment by default under Rule 35, Section 7 of the original Rules of Court). Therefore, even if Flores had attempted to appeal therefrom, his appeal would have been out of order.

It has been argued that, as the judgment by default against Flores was in favor of Pilar Bautista upon her third party complaint, the same may not be considered final or enforceable until the final determination of the main case - which took place only upon the finality of our decision in G. R. L-6569 and G. R. L-6576 promulgated on April 18, 1956 - and that, this being so, the action for revival in question was filed on time. This argument might apply if the cause of action alleged in Pilar Bautista's third party complaint against Mariano R. Flores was dependent upon the success or failure of the claim subject matter of the main action instituted by Wenceslao Pascual against Pilar Bautista, plaintiff and defendant therein, respectively. Such, however, is not the case before Us, where it is clear that Bautista's cause of action as third party plaintiff against third party defendant Flores was based on paragraph 5 of their agreement of January 6, 1945 which reads as follows:

"(5) The VENDOR shall, in the event that for any reason whatsoever Nelly Montilla de Lavina shall refuse or fail to execute in favor of the VENDOR a deed of sale covering the said fish-pond, pay unto the VENDEE the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00) legal tender at the time, as liquidated damages, plus all expenses that the VENDEE shall have incurred for the improvement of the fishpond; and in case of non-payment of the liquidated damages and the other expenses above stated the VENDEE shall have the right to foreclose and levy upon the guarantee hereinabove described, the VENDOR hereby expressly waiving all his rights under the provisions of Rule 39, Section 12 of the Rules of Court;"

The above stipulation makes it crystal clear that the vendee (Pilar Bautista) would be entitled to recover from the vendor (Mariano Flores) the liquidated damages and expenses agreed upon "in the event that for any reason whatsoever Nelly Montilla de Lovina shall refuse or fail to execute in favor of the vendor a deed of sale covering the said fishpond" (Underline supplied). Because Mrs. Lovina refused and/or failed to execute the contemplated deed of sale the trial court rendered the judgment by default against Mariano Flores. That the cause of action or claim of Pilar Bautista, as third party plaintiff, against Mariano Flores, as third party defendant, did not depend upon the outcome of the principal action (Pascual vs. Bautista and the Lovinas) is evident from the nature of the claims involved therein described in our decision in G. R. L-6569 and G. R. L-6576 as follows:

"In his complaint against Pilar Bautista, the Lovinas, and the latter's man, Yambao, Pascual alleged his lease, dispossession and losses and sought: (a) the rescission of the lease with Pilar Bautista; (b) the return of the P10,000 he paid; and (c) payment of P27,556.00, representing the value of the fish he had in the fishpond; P20,814.72 worth of repairs thereto and P3,000.00 attorney's fees.

"Bautista answered pleading the acquisition of the rights of Mariano Flores; that she offered to place the fishpond in plaintiff's possession but that the latter refused to resume possession; and counterclaimed for the balance of the second year's rent, amounting to P6,000.

"The Lovinas filed answer denying privity of contract with Pascual; and pleaded the expiration of Flores' option without its being exercised, and that they had repossessed the fishpond because it was abandoned.

"Subsequently, Pilar Bautista filed a third-party complaint against Mariano R. Flores alleging breach of the contract Exh 6-Bautista, and consequent losses; and prayed for judgment in the sum of P500,000 as liquidated damages and attorney's fees, and that the mortgage in her favor be foreclosed.

"Flores was declared in default and his properties were attached."

Whether or not the filing of the third party complaint was proper can not now be raised by, nor be invoked in favor of Pilar Bautista, because it was she precisely who filed it. Moreover, it is clear from the provisions of the Rules of Court that for a claim to be properly raised in a pending action by way of third party complaint, it is not necessary that it be one arising from or entirely dependent upon the main action; it is enough that it be "in respect" of the claim of third party plaintiff's opponent (Rule 6, Section 12, Rules of Court), or that it be "connected with plain-tiff's claim" (Capayas vs. Court of First Instance of Albay 43 O. G., 2071, 2074; U.S. Commercial Company vs. Macario Guevara et al., 48 O. G. pp. 612-613).

The foregoing makes unnecessary the consideration of other issues raised by appellant in his brief.

WHEREFORE, judgment is hereby rendered setting aside the appealed decision, without costs.

Concepcion, C.J., Reyes, J.B.L., Fernando, and Villamor, JJ., concur.

Makalintal, Zaldivar, and Teehankee, JJ., took no part.

Barredo, J., concurs in separate opinion.

Castro, J., on official leave.

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CONCURRING OPINION

BARREDO, J.:

I concur in the result.

I find myself unable, however, to agree with the proposition impliedly, if not directly, upheld in the main opinion that even if the claim of plaintiff-appellee Pilar Bautista is considered as a proper third-party complaint, the judgment in her favor and against Flores would still have been enforceable even before the decision of this Court in G. R. Nos. L-6569 and 6576 became final and executory, which, to be sure, is unnecessary and, therefore, obiter dictum.

To start with, if it is true that the allegation of defendant-appellant Mariano Flores under his contract with appellee Bautista was really entirely independent of any liability of the latter to Wenceslao Pascual who had sued her, I cannot see how a third-party complaint could have been filed by appellee. To say that the basis of Bautista's claim against Flores is completely independent of Pascual's cause of action against her and, in the same breath, hold that such claim of Bautista against Flores is "in respect of" Pascual's claim strikes me as lacking in consistency. Even if this point, as the main opinion holds, can no longer be raised now, it is my considered view that it is better that the true nature of the remedy in question be determined, and thereby clearing any doubt as to the rights of the parties before Us. I maintain, therefore, that the pleading filed by appellee Bautista against appellant Flores was not a third-party complaint but an ordinary complaint, mistakenly pleaded within the pending action between Pascual and appellee. Nonetheless, since judgment by default was actually rendered thereon by the court, apparently without anybody being the wiser and because there was no objection from anyone, the said judgment must be treated as an ordinary one, as contradistinguished from a judgment upon a third-party complaint. Accordingly, I concur in the result of the main opinion. If, on the other hand, the pleading in question were to be considered as a genuine third-party complaint, the dispositive portion of this decision would not be, in

my opinion, correct.

I regret I have to disagree with the excessively broad concept of a third-party complaint defined by the main opinion. I do not believe that the phrase "in re-spect of his opponent's claim" used in Section 12 of Rule 6 of the Rules of Court concerning third-party com-plaints, can be equated with or has the same connotation as that of being merely "connected with the plaintiff's claim", as the main opinion holds. I realize that this quotation is from *Capayas vs. Court of First Instance of Albay*, 77 Phil. 181, 183, but I am afraid it can be out of context, for, precisely in that very decision, this Court held:

"Petitioner's claim for indemnity against Lladoc and others does neither arise out of the same transaction or the alleged petitioner's tortuous act on which plaintiff's action is based, nor is it based on a different transaction but connected with the plaintiff's claim. Plaintiff's claim against petitioner and his co-defend-ants is, according to the allegations in the complaint, (a) to recover from them damages for the palay which have been illegally harvested from certain lands belonging to the plaintiff, and (b) to enjoin them from entering said lands and disturbing and molesting the plaintiff's right of ownership and possession thereof. Whereas the peti-tioner's claim against Isidora Lladoc and others is to recover from the latter the value of the three parcels of land and their fruits amounting to P3,200 plus legal interest, for hav-ing said Isidora, as administratrix of the intestate estate of Ceferino Cuanzon, sold said lands in 1927 without authority of the court to Domingo Imperial, from whom said lands were acquired by the plaintiff. And in the present case, it is clear that if the so-called third-party complaint be allowed, Isidora Lladoc and others named therein as third-party defendants could not assert any defense which the petitioner has or may have to the plaintiff's claim."

Indeed, the true nature and concept of a third-party complaint was more comprehensively stated in that *Capayas* case thus:

"Secondly. Because the respond-ent court would have committed an error if it had admitted the so-called third-party complaint filed by the petitioner against Isidora Lladoc, Fulgencio Lladoc and Gre-gorio Navera, since the facts al-legged therein do not show that the petitioner is entitled to indemnity against them 'in respect to plain-tiff's claim.' The test to deter-mine whether the claim for indem-nity in a third-party complaint, 'in respect to plaintiff's claim' is, whether it arises out of the same transaction on which the plaintiff's claim is based, or the third-party's claim, although aris-ing out of another or different contract or transaction, is con-nected with the plaintiff's claim.

"According to the decision in the case of *Crim. vs. Lumberman's Mutual Casualty Co.* (26 Fed. Supp., 715 [1 Fed. Rules Service, 14a11, Case No. 1]), the test to determine when a third-party defendant may be impleaded is whether he could have been joined originally as a defendant by the plaintiff. But this could be applied only if there could be asserted against the defendant as the third-party defend-ant, jointly and severally or in the alternatives, any right to relief arising out of the same transaction. For example in an action against the surety on a bond, the surety may bring in as a third-party de-fendant, the principal who had agreed to indemnify the surety, be-cause the surety's claim arises out of the same transaction. (*United States vs. United States Fidelity & Guaranty Co. vs. Kolling*, U. S. Dist. Ct., D. Minn., February 1, 1940, 2 Fed. Rules Service 14a222, Case No. 1). The above test does not cover all cases in which im-pleading a third-party may be and have been allowed, which are also covered by the test we have laid down in the previous paragraph. Under Rule 14 of Federal Rules of Civil Procedure, which corresponds to our Rule 12, the bringing in of a third-party defendant is proper if he would be liable to the plain-tiff or to the defendant for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction. So in the case of *Carbola Chemical Co., Inc. vs. Trundle Engineering Co.* (U.S. Dist. Ct., S.D.N.Y., December 26, 1942), it was held that in an action for breach of contract to render en-gineering services and to survey a plant, the defendant was allowed to bring as a third-party defendant, the manufacturer which sold defendant's equipment to the plaintiff (7 Fed. Rules Service, 14a11, Case No. 1). And in a negligence action by the purchaser of a confection in which it is alleged that the confec-tion contained a foreign object, the defendant

may bring in the person who supplied him with the constituent containing the foreign object, as a third-party defendant (*Saunders vs. Southern Dairies, Inc.* U.S. Dist. Ct., District of Columbia, November 6, 1939 [2 Fed. Rules Service, 14a.226, Case No. 3]).

"Another test, provided for by section 4, Rule 12, of our Rules of Court, is whether the third-party defendant may assert any defenses which the third-party plaintiff has or may have to the plaintiff's claim. If he may properly assert such defenses, then he is a proper third-party defendant; otherwise he is not and the claim against him can not be considered as a third-party complaint."

The way I understand the above-quoted dissertation, it does not lay down one single test that can be utilized or applied separately from the others. To determine whether a third-party complaint is proper or not, all the tests mentioned must have to be satisfied.

There is no question that the purpose of a third-party complaint is to avoid multiplicity of suits, but this principle cannot be so extensive as to authorize the impleading of a party whose controversy with the impleader relates to a claim with which those already in the action have nothing to do, even if the transactions involved in the controversy already in court may have some connection, as when it is part of the same series, with that to be involved in the third-party complaint. What justifies a unity of proceedings is community of interest and issues, except as between parties already contending with each other, in which all kinds of claims are permissible to be pleaded against each other. I maintain there is a distinction between related transactions and related claims, and the latter, not the former, are the ones that can be the subject of the third-party complaints. In other words, the claims must be related to the same transaction and not to merely related transactions.

In defining a compulsory counter-claim, Section 4 of Rule 9 uses the phrase "necessarily connected with". Of course, the reference here is to transaction or occurrence and not to claims. My point, however, is that were it the intention of Section 12, Rule 6 to refer to merely "connected" claims, it would have used that word instead of the phrase "in respect of" as in Section 4, Rule 9, and thereby avoid confusion. If it is bad to give to the same word used in the various parts of a single body of rules or laws different meanings, since it must be presumed that the authors thereof must have intended a uniform meaning for it throughout, conversely, it is just as bad to attribute the same meaning to two different, if quite synonymous words therein, for it is obvious that the use of a different word, with a known somewhat different connotation, indicates that the meaning intended to be conveyed is also different.

It appears quite clear to me that in ordinary parlance, to say that one thing is "connected with" another does not convey the same import as saying that it is "in respect of" it. "Connected with" comprehends a much broader idea than "in respect of". I am sure that, at least, these two phrases are not always interchangeable.

According to Senator Vicente Francisco, a distinguished authority in procedural law, "The rule on third-party complaint requires that the claim of the defendant be 'in respect of the plaintiff's claim.' Unlike permissive counter-claim, the third-party complaint must be founded on the claims in the original action." (*The Revised Rules of Court in the Philippines, Annotated and Commented by Vicente Francisco, Vol. I, p. 351. Emphasis supplied.*) In this connection, he cites *United States vs. Jollimore vs. Holland Furnace Co.*, 5 Federal Rules Service 205, thus: "A third-party defendant may not be impleaded if the effect would be to introduce a new and separate controversy into the action. The test to determine whether a third-party may be impleaded is whether he could have been joined originally as a defendant by the plaintiff or whether he is liable as a guarantor, surety, insurer, or indemnifier of the principal defendant." Further, the same author opines:

"2. Purpose of third-party complaint. - The purpose of third-party complaint is to avoid two actions which should be tried together to save time and cost of reduplication of evidence, to obtain consistent results from identical or similar evidence, and to do away with the serious handicap to a defendant of a time difference

between a judgment against him, and a judgment in his favor against the third-party defendant. (Moore's Federal Practice, 740; Tullgreen vs. Jasper, 1939, 27 F. Supp. 413.)

"The purpose of the rule is to avoid delay and circuity of actions and to enable the controversy to be disposed of in one suit, that is, to permit the determination in a single suit of not only the original claim, but the added party's liability therefor. (67 C.J.S., 1934; The purpose of third-party procedure is to avoid circuity of action and permits the determination in a single action of the rights and liabilities of parties growing out of facts that relate to the same transaction. - Carbola Chemical Co., Inc. Trundle Engineering Co., 7 Federal Rules Service, 269; The primary object of the civil procedure rule permitting a defendant to bring in a third-party defendant is to avoid circuity of action and to dispose, in one litigation, of an entire subject matter arising from a particular set of facts. - Tullgreen vs. Jasper, (1939) 27 F. Supp. 413.)

"3. Nature of third-party complaint. - Third-party complaint is merely a device by which the defendant can bring into the original suit a party against whom he will have a claim for indemnity or remuneration as a result of a liability established against him in the original suit. It is a species of joinder of actions where the second action accrues only as a result of the first action. All liabilities are determined in the one action and the use of third-party complaint is discretionary with the court. (Univ. of Cincinnati Rev. Vol. 13, No. 1, pp. 92-93)."

I submit that a fourth-party complaint is nothing more nothing less than a third-party complaint, except that it is only in respect of the claim of the third-party plaintiff against the third-party defendant. Now, Section 13 of Rule 6 defines a fourth-party complaint as follows:

"SEC. 13. Fourth, etc., parties. - A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant."

I am convinced that these simple words applied *mutatis mutandis* to the definition of a third-party complaint convey the true concept of such pleading. I simply cannot see why a plaintiff can be made to saddle the time, inconvenience and expenses of attending to a third-party complaint wherein the fate of his own claim against the defendant is absolutely independent of the claim of the defendant against the third-party defendant just because the transaction involved in the third-party complaint happens to be related somehow to the transaction subject of his complaint, specially if the plaintiff has not taken part nor is he mentioned or referred to in such transaction. My fear is that such an amplification of the concept of third-party complaints which the main opinion seems to sanction will not serve the purpose of "assisting the parties in obtaining just, speedy and inexpensive determination of every action or proceeding" as envisioned in Section 2 of Rule 1. On the contrary, it is bound to create confusion, unnecessary delay and expense for the plaintiff without any corresponding benefit to the interests of justice.

Applying these views to this case, I reiterate that if the claim of Bautista were a real third-party complaint, the effect would be that the judgment, even by the default, against Flores did not become executory until after the claim against Bautista had been finally determined, for in my concept, as explained above, of a real third-party complaint, the third-party defendant is never liable to the defendant unless the latter is liable to the plaintiff.

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