

ALEJANDRO A. LICHAUCO, PETITIONER-APPELLANT, VS. HON. COURT OF APPEALS, HON. LUIS B. REYES, JUDGE OF THE CFI OF MANILA, FEDERICO V. CEREZO AND CIPRIANO SANTOS, RESPONDENTS-APPEL...

G.R. No. L-23842. March 13, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of the decision of the Court of Appeals dated September 30, 1964, denying for lack of merit the petition for certiorari of Alejandro Lichauco, in CA-G.R. No. 32023-R, against an order of the Court of First Instance of Manila granting the motions of Federico Cerezo and Cipriano Santos to intervene in Civil Case No. 43537 of the latter court.

The factual background of the case is as follows:

On July 5, 1960, herein petitioner Alejandro Lichauco filed with the Court of First Instance of Manila a derivative suit on behalf of the Republic Resources Development Corporation (REDECO for short) and himself in his capacity as a stockholder of REDECO, against Jose Tiong, et al., directors and controlling stockholders of REDECO, for the annulment of the stock options and grants of perpetual oil royalties which they had voted in their favor and of the other defendants at the expense of the corporation. The case was docketed as Civil Case No. 43537.

All the defendants, except the nominal defendant REDECO, filed their respective answers and alleged that the stock options and oil royalties voted in their favor were valid and binding upon the corporation and its stockholders. The REDECO was impleaded as a nominal defendant because its consent to the suit could not be obtained, it being under the control and domination of the main defendants. The Padilla Law Offices represented REDECO in the suit.

Upon motion of nominal defendant REDECO thru Atty. Teodoro Padilla, the Manila Court of First Instance ordered on September 7, 1960, that a notice of the pendency of the suit be made by publication apprising all interested parties, particularly the corporate stockholders of REDECO, of the subject-matter of the case and informing them that they may apply for intervention therein on or before October 3, 1960.

On September 23, 1960, Francisco Lopez, a REDECO stockholder, intervened and joined Alejandro Lichauco in the latter's derivative suit. One Mrs. Elizabeth Newbold Taylor likewise intervened but later on withdrew her intervention upon amicable settlement with the parties.

On November 28, 1960, all the parties, except Austin G. Taylor, submitted to the lower court a Joint Motion Submitting Compromise to Judgment setting forth therein the compromise agreement reached to settle the case amicably. The compromise agreement provides as follows:

"I

"On plaintiff's First Cause of Action for the nullification of Article Eleventh of REDECO'S Amended Articles of Incorporation and All Unexercised Options Thereunder.

"1. Defendants irrevocably waive all their option rights, under Article Eleventh relating to any future increase of REDECO'S capital stock.

"2. Defendants shall retain all their unexercised option rights, in the proportion established among them under Article Eleventh, relating to the increase of REDECO'S capital stock from P2,000,000.00 to P15,000,000.00, it being understood that these unexercised option rights pertain to and cover 257,500,000 shares of REDECO'S unissued capital stock, exercisable on or before August 20, 1961, at the par value of P0.01 per share. Defendants, however, shall retain these options subject to the following terms and conditions:

(a) Defendants shall exercise at least twenty per cent (20%) of their unexercised options under Article Eleventh not later than ninety (90) days from the signing of this settlement by making full and immediate payment of the purchase price of the same to REDECO, Provided, however, that if judicial approval of this settlement is rendered after the expiration of the said 90 days period, then said options shall be exercised not later than 15 days from the date of such Court approval;

(b) Any defendant who fails to exercise at least twenty per cent (20%) of the unexercised option corresponding to him/her under Article Eleventh within the period and under the conditions stipulated in the subsection immediately preceding shall be deemed to have waived and forfeited the entire balance of his/her unexercised option;

(c) Shares purchased by defendants from REDECO under their options shall not be sold, transferred or assigned within a period of sixty (60) days following the date of purchase and REDECO shall not make, accept or recognize any transfer in its books in violation of this clause, Provided, however, that the limitation contained herein shall not apply to the shares purchased by defendants from REDECO pursuant to subsection (a) of this paragraph.

"Defendants shall exercise their option by making full and immediate payment to REDECO of the purchase price of the shares.

"II

"On plaintiff's Second Cause of Action for the nullification of defendant's overriding royalty rights equivalent to 3-1/8% of the value of all oil, gas and other minerals saved and recovered from REDECO'S petroleum concessions.

"1. Said royalty rights are hereby cancelled and nullified ab initio.

"III

"Plaintiff's Attorney's Fees

"1. In recognition of the substantial benefit conferred upon REDECO by virtue of plaintiff's action, as well as of his efforts, since January 1960 to relieve REDECO of the obligations subject matter of his letter of protest, marked Annex "C" of his Complaint, and subsequently of the First and Second Causes of Action thereof, REDECO hereby stipulates and agrees, consistent with law and applicable jurisprudence governing attorney's fees in derivative suits, to pay plaintiff compensation by way of attorney's fees in such amount as the court shall fix and determine.

"IV

"Effectivity of Agreement

"1. The terms of this compromise shall not be binding upon the parties hereto except and until after the same shall have been approved by the court and judgment rendered thereon.

"V

"Overriding Motive for Compromise

"In arriving at the terms of this compromise, the parties have been guided principally by the overriding objective of expeditiously settling their controversy for the benefit of the nominal defendant, on behalf of whose corporate interest the present derivative action was instituted." (Pp. 5-7, Brief for Petitioner-Appellant; pp. 8-11, Joint Brief for the Respondents)

On November 30, 1960, Lichauco filed "Plaintiff's Manifestation Stating His Reasons for Submitting the Above-entitled Case to Judgment on a Compromise", after which, REDECO on December 16, 1960, filed a Manifestation in answer pointing out the fact that plaintiff Lichauco was misconstruing the stipulation on attorney's fees in the Compromise Agreement to mean compensation for his personal services, as distinguished from his expenses for his lawyer; and the fact that under the law and applicable jurisprudence governing attorney's fees in derivative suits, plaintiff was in no way entitled to compensation for personal services in the suit but only to compensation for the attorney's fees and litigation expenses he had incurred.

On January 10, 1961, Lichauco filed a Manifestation citing authorities in support of his claim to compensation for his own personal services, as distinguished from attorney's fees he had to pay to his lawyer who filed a Manifestation later maintaining the fact that his client, Alejandro Lichauco, is entitled to compensation for his personal services.

On February 17, 1961, the trial court rendered its decision on the compromise agreement, the dispositive portion of which is as follows:

"WHEREFORE, the Joint Motion Submitting Compromise to Judgment is granted, the compromise approved, and judgment is hereby rendered in accordance therewith. The parties are enjoined to comply with the terms and conditions of the compromise. x x x.

"As regards plaintiff's attorney's fees, the Court finds it necessary to determine the same after a hearing and, therefore, it is not advisable to include in this decision the amount of plaintiff's compensation by way of attorney's fees."

Before the final determination of Mr. Lichauco's attorney's fees by the trial court, the petitioner (Alejandro Lichauco) filed on July 6, 1961, a manifestation withdrawing his claim for attorney's fees on the ground that a settlement thereof had been reached. On July 10, 1961, REDECO filed its rejoinder manifesting before the trial court the fact that petitioner Lichauco had been paid by REDECO the sum of P27,500.00 in full settlement of his claim for attorney's fees, so as to avoid an extended or protracted trial of the case.

On July 10, 1961, the same date when REDECO filed its manifestation about the P27,500.00 payment of attorney's fees to Atty. Lichauco, Mr. Federico V. Cerezo filed his Urgent Motion to Intervene, alleging among others that it is only the court that can determine the amount of attorney's fees to be paid to Atty. Lichauco in the derivative suit as stipulated in the compromise agreement submitted in court. Again on July 14, 1961, Mr. Cipriano Santos, another REDECO stockholder, filed another Urgent Motion to Intervene, alleging therein that Atty. Lichauco had been paid with REDECO funds in the amount of P27,500.00 in violation of the compromise agreement of November 28, 1960, and that the receipt of said amount by Atty. Lichauco was an illegal attempt to deprive the trial court of its jurisdiction to protect the corporation and constituted a violation by REDECO'S Board of Directors of its fiduciary obligations to its stockholders.

On July 22, 1961, the trial court, in view of the filing of the urgent motions to intervene, issued the following order, to wit:

"An urgent motion to intervene having been filed in this case by Federico Cerezo and Cipriano Santos through their respective counsel, plaintiff Alejandro A. Lichauco, in his capacity as stockholder of REDECO, is hereby given five (5) days, from receipt of a copy of this Order, to show cause why the motions to intervene should not be granted."

On August 10 and 11, 1961, Messrs. Federico Cerezo and Cipriano Santos filed their respective motions informing the trial court that despite the service upon Mr. Lichauco of the order of July 22, 1961, Mr. Lichauco had not filed any opposition thereto, and therein reiterated their prayer to be allowed to intervene. On August 12, 1961, the trial court granted their motions to intervene.

Likewise, on August 12, 1961, the trial court issued an order giving herein petitioner, Alejandro Lichauco, a period of five (5) days from receipt of a copy of the Order to show cause, if any he has, why the sum of P27,500.00 he received from REDECO should not be deposited with the Court.

On August 15, 1961, however, the Padilla Law Offices withdrew its appearance as counsel for REDECO and reiterated its stand that Atty. Alejandro Lichauco is not entitled to any amount as attorney's fees for himself for personal services legally rendered or for legal services personally rendered in his derivative suit.

On August 22, 1961, Atty. Alejandro Lichauco filed his Manifestation and Motion in compliance with the order of the trial court dated August 12, 1961, and averred as follows:

"1) The motions filed by movants Cerezo and Santos do not state or allege any cause of action against plaintiff. Therefore, the prayer of movants for an order compelling plaintiff to deposit the sum of P27,500.00 which he accepted in settlement from REDECO is premature.

"To compel plaintiff at this stage to deposit in court what he has received in legitimate and bona fide settlement from REDECO, when movants have not even stated a cause of action against him, much less filed a formal complaint, would arbitrarily deprive plaintiff of property, without just cause and without due process of law.

"2) Any discussion on the merits of the allegations contained in the motions filed by movants Cerezo and Santos would only lead to a multiplicity of pleadings. Plaintiff therefore, reserves his right to file such responsive pleading as may be necessary at the appropriate time, and will do so only when movants Cerezo and Santos shall have filed a formal complaint, paid the requisite filing fee and shall have alleged such cause or causes of action, if any, that they may have against plaintiff.

"3) To plaintiff's information and belief movants Cerezo and Santos are not the same Cerezo and Santos who appear or might appear as stockholders of record of REDECO; movants in fact being fictitious persons, not stockholders of REDECO, who have filed the subject motions to intervene simply and exclusively for the purpose of instituting a malicious and frivolous proceeding.

"4) The settlement entered into between plaintiff and REDECO was made in the full exercise of their civil and constitutional rights. No court in the Philippines has the power to prohibit litigants from settling their differences, much less to prevent and prohibit a party claimant from withdrawing his claim in court on the basis of a settlement."

On August 26, 1961, herein respondents Cerezo and Santos filed an Opposition and Motion to the above-cited pleading of Lichauco and on the same date they filed their Complaint-in-Intervention.

On August 30, 1961, the trial court denied the prayer for the deposit of the attorney's fees of P27,500.00. However, the court stated:

"The Manifestation Withdrawing Plaintiff's claim to Attorney's fees has not been acted upon by the Court, in view of the Manifestation of counsel for the REDECO and the urgent motions to intervene of Federico Cerezo

and Cipriano Santos."

On September 29, 1961 and October 2 and 4, 1961, the defendants-in-intervention, namely, Lichauco and the REDECO Directors, filed their respective answers and counterclaims. The plaintiffs-in-intervention, on the other hand, filed their reply and answers to counterclaims. Thereafter, the trial court set the case for trial on March 28, 1961.

On the date set for trial, the plaintiffs-in-intervention presented their first witness, Federico Cerezo, whose testimony was not finished on that date, March 28, 1962, for lack of material time. During the trial on that date, the appearance of Atty. Sabino Padilla, Jr., a partner in the Padilla Law Offices, as collaborating counsel for the plaintiffs-in-intervention, was questioned to the extent of asking the court for his disqualification.

On June 19, 1962, (one day before the scheduled trial of June 20, 1962) herein petitioner Lichauco moved for the dismissal of the case on the grounds that: (1) his right to the attorney's fees is now *res judicata* and no longer within the jurisdiction of the trial court, and (2) the complaint-in-intervention should not be given due course as the amount of attorney's fees has already been settled and paid in compromise.

On June 30, 1962, plaintiffs-in-intervention filed their opposition to the motion to dismiss on the grounds that: (1) the compromise on attorney's fees is illegal since it does not have the approval of the trial court; (2) the motion to dismiss is improper, because it presumes that the second compromise on attorney's fees is valid and legal; (3) the defense of *res judicata* is no longer available as the same was not pleaded as an affirmative defense in the answer; and (4) *res judicata* can be waived.

On September 20, 1962, after the filing of the reply, the trial court denied the motion to dismiss filed by Lichauco.

It was only on December 11, 1962, one day before the resumption of the scheduled trial that Lichauco filed his motion for reconsideration of the order of September 20, 1962, which was, however, denied by the trial court on January 23, 1963.

On March 8, 1963, Lichauco filed a motion for indefinite postponement of the trial of the case on the ground that he would be filing a petition for certiorari with the Court of Appeals which was granted by the trial court.

On March 22, 1963, Mr. Lichauco filed his petition for certiorari with the Court of Appeals, alleging that the respondent Judge, Hon. Luis B. Reyes, acted without or in excess of his jurisdiction when he allowed and admitted the intervention of private respondents Cerezo and Santos. The petition was denied by the appellate Court on September 30, 1964, the dispositive portion of the denial reading as follows:

"WHEREFORE, the instant petition is hereby denied for lack of merit, with costs against petitioner."

A motion for reconsideration filed by Lichauco, having been also denied, this petition for certiorari was filed with this Court.

The issue here presented is whether the intervention of Federico V. Cerezo and Cipriano Santos in Civil Case No. 43547 of the Court of First Instance of Manila was properly allowed by the trial court.

Petitioner maintains that the joint intervention of Cerezo and Santos was erroneously allowed by the trial court, said intervention having been filed beyond the October 3, 1960, deadline set by the trial court and after the rendition on February 17, 1961, by the trial court of its decision on the main derivative suit by approving the compromise agreement of the parties dated November 28, 1960. Besides, it is further argued that the complaint-in-intervention is only questioning the legality of the payment of attorney's fees which is an issue entirely different and distinct from, and not germane to, the issues in the main derivative suit.

The pertinent provision of law on the matter is found in Section 2, Rule 12, of the revised Rules of Court, which, among others, provides as follows:

"A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

This provision of law is very explicit in that intervention may only be allowed at the discretion of the court before or during the trial of the case. This simply means anytime before the rendition of final judgment.

The situation here is clear. A reservation of the determination of attorney's fees was expressly provided by the trial court when it issued its order of February 17, 1961, approving the compromise agreement of the parties, thereby subjecting the issue on attorney's fees to further hearing and trial on the merits as previously agreed upon by the parties themselves. It was at this juncture that the intervention was sought and allowed when the "second compromise" on attorney's fees was pending consideration by the trial court.

The herein petitioner even joined cause with the intervenors and even went to the extent of entering into the trial of the case in intervention, on March 28, 1962. With more reason, therefore, that the petitioner cannot now raise the objection that the intervention was late and, therefore, was erroneously permitted, We do not perceive any indication of grave abuse of discretion on the part of the trial court and of the appellate court.

Pertinent hereto is Our ruling, relative to intervention on attorney's fees, in *Otto Gmur, Inc. vs. Eulogio P. Revilla, et al.*, 55 Phil. 627, where we held:

"Upon the point whether the petitioners should be permitted to intervene in the matter of the determination of the fee to be paid to the attorney x x x, it is clear upon fundamental principles governing procedure that such intervention should be permitted. x x x .

"x x x that an attorney's fee cannot be determined until after the main litigation has been decided and the subject of the recovery is at the disposition of the court. The issue over the attorney's fee only arises when something has been recovered from which the fee is to be paid." (*Otto Gmur, Inc. vs. Revilla, et al.*, 55 Phil. 627, 630, 632).

This explains why private respondents Cerezo and Santos could not have earlier intervened on or before October 3, 1960, or on or before February 17, 1961, when judgment on the derivative suit was rendered, because their cause of action accrued only when petitioner Lichauco obtained the amount of P27,500.00 as attorney's fee from the funds of the REDECO. The intervention was, therefore, timely.

WHEREFORE, the judgment appealed from is affirmed and the instant appeal by certiorari is hereby denied.

Costs against the petitioner.

SO ORDERED.

Makalintal, C.J., (Chairman), Castro, and Makasiar, JJ., concur.

Teehankee, J., concurs on the ground that despite due notice, petitioner failed to oppose respondents' late intervention and in fact filed his answer with counterclaim to their complaint-in-intervention. It was too late after trial had commenced for him in turn to challenge belatedly the intervention.

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