

LUIS ENGUERRA, PLAINTIFF-APPELLANT, VS. ANTONIO DOLOSA, DEFENDANT-APPELLEE.*G.R. No. L-23233. September 28, 1967*

Ponente: CONCEPCION, C.J.

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Appeal, by plaintiff Luis Enguerra, from an order of dismissal of the Court of First Instance of Sorsogon.

Plaintiff Enguerra was chief baker for the De Lux Bakery and Grocery, in Sorsogon, Sorsogon, from June 18, 1959 to October 8, 1961. On December 14, 1961, he filed, with the municipal court of Sorsogon, Sorsogon, a complaint, against defendant Antonio Dolosa, as owner of said establishment, to recover the sum of P4,056.00, for unpaid overtime services allegedly rendered during said period. The court having later dis-missed said complaint, Enguerra appealed to the Court of First Instance of Sorsogon, where the case was docketed as Civil Case No. 1800.

Soon thereafter, or on January 24, 1963, Enguerra filed, with the same Court of First Instance, another complaint against Dolosa, which was docketed as Civil Case No. 1804, to recover the following:

- "1. Termination Pay P 392.74
2. Underpayment of wages. 64.20
3. Compensatory Damages, un-
earned income from unjust-
tified dismissal 6,363.22
4. Compensatory Damages, un-
paid overtime 4,347.89
5. Moral Damages. 5,000.00
- Exemplary Damages 2,500.00
- Attorney's fees. 3,500.00"

On motion of Dolosa, he was granted, on February 6, 1963, an extension of 30 days, "counted from to-day," to submit his answer. On March 8, 1963, he filed, instead, a motion to dismiss, upon the ground that said pending case No. 1800 is an action between the same parties, for the same cause of action, and that the complaint in case No. 1804 violates "the rule against splitting a cause of action." Subsequently, or on March 12, 1963, Enguerra sought to have Dolosa declared in default, upon the ground that his motion to dismiss had been filed one (1) day late, and that it was merely pro forma, because of which it did not suspend the running of the period to file his answer. The Court of First Instance granted the motion to dismiss and denied the motion to declare Dolosa in

default. A reconsideration of the orders to this effect having been denied, Enguerra interposed the present appeal, directly to the Supreme Court, alleging that the lower court had erred (a) in not declaring Dolosa in default; and (b) in dismissing the complaint herein.

As regards the first alleged error, Enguerra maintains that the extension of 30 days granted in the order of February 6, 1963, ex-pired on March 7, 1963, because the order stated that said period should be "counted from today," which, Enguerra maintains, should be understood to mean from February 6 to March 7, 1963. An identical theory was rejected in *Ulpiano vs. Court of Agrarian Relations*,¹ in the following language:

"The petitioners raise procedural questions. On 2 August 1957 the respondents received a copy of the decision dated 22 July 1957 (See Annexes E & F). On 15 August they filed a petition for extension of time to file motion for reconsideration, dated 13 August, because of lack of material time to read the voluminous transcript of stenographic notes and for that reason they could not readily formulate their arguments in support of the motion for reconsideration (Annex F). On the same day, 15 August, the Court entered an order granting the respondents 'fifteen (15) days counted from today within which to file their motion for reconsideration of the decision rendered on July 29, 1957 (should be 22) in the instant case.' (Underscoring supplied.) On August 30, the respondents mailed their motion for reconsideration in the post office of Cuyapo, Nueva Ecija. The petitioners claim that counting from 15 August, the day the 15-day period commenced to run, to 30 August, when the respondents mailed their motion for reconsideration, 16 days already had elapsed, and contend that the Court had already lost jurisdiction of the case and could no longer reconsider its decision dated 22 July.

"x x x x x x x x

"Rule 28 of the Rules of Court provides:

"In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or, default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday.

This rule adopts the exclude-the-first and include -the-last day method for computing any period of time. Therefore, excluding the day when the order granting their petition for extension of time to file motion for reconsideration was entered by the Court (15 August) and including the day the respondents mailed their motion for reconsideration (30 August), only 15 days had elapsed. Hence, the respondents' motion for reconsideration was filed within the extension of time granted by the Court."

No reason has been advanced, and we find none, to depart from this view, which is in line with the spirit and the letter of our laws and the rules of Court, and is, accordingly, reiterated.

As regards the second procedural ground of the objection to the motion to dismiss, it should be noted that a motion is said to be pro forma when it is apparent therefrom that the movant has not endeavor-ed to make it reasonably persuasive or convincing, his purpose being merely to gain time or to delay the proceedings. In the case at bar, the motion explicitly states "that there is another actions pending between the same parties for the same cause, namely: Luis Enguerra vs. Antonio Dolosa – Civil Case No. 1800, now pending be-fore this Honorable Court;" and "that the filing of the above-entitled case is a violation of the rule against splitting a cause of action."

Having thus expressed, not only the legal grounds for the mo-tion, but, also, the particular and concrete facts upon which said grounds rely – with specification of the title and number of the case on which the motion was based and of the court before which the case is pending, coupled with the other circumstances hereinafter adverted to and appearing in the records of both cases-said motion, mani-festly, is not pro forma,² and its presentation

suspended the running of the period for the filing of defendant's answer.

The next and most important question for determination is whether or not Civil Case No. 1800 is for the same cause of action as Civil Case No. 1804, both being admittedly between the same parties. In this connection, it should be noted that the basis of the complaints in both cases is the same, namely: that Enguerra's rights as Dolosa's chief baker, from June 18, 1959 to October 8, 1961, have been violated by the latter. The alleged violations may have several aspects, such as: 1) underpayment of wages; 2) nonpayment of overtime; 3) transfer, allegedly equivalent to unjustified dismissal, and, hence, the claim for separation pay; and 4) damages (compensatory, moral and exemplary, and attorney's fees). Yet, the cause of action – the spring from which the right to sue emanates – was only one and the same breach of their contract of employment, without which none of the claims made by plaintiff would have no leg to stand on.

The statutory provisions regarding termination pay, minimum wage, overtime and damages are as much a part of said contract of employment, as the pertinent provisions of the Civil Code on obligations and contracts, in general, and on lease of services, in particular. The difference between underpayment of wages on a given day and nonpayment of overtime for work done on the same day, is not – insofar as the cause of action therefor is concerned materially at variance from that which exists between said underpayment of wages for the day given and the similar underpayment of wages for the next day. Indeed, if one month later, the aggrieved laborer should decide to sue the employer for breach of contract, it is obvious that the former cannot file a complaint for some effects of such breach, and another complaint or its other effects. He must include in the complaint his claim for underpayment for the aforementioned two (2) days, both being overdue at the time of the commencement of the action.³ Similarly, if underpayment of the minimum wage for a given day or month were coupled with failure or refusal to pay overtime, for the same day or month, a complaint filed thereafter should include both, underpayment of wages and overtime pay. In other words, Courts should not sanction a complaint for one, and another action for the other. Hence, in his own complaint herein plaintiff has, in fact, included his claims for alleged underpayment of wages, overtime, compensatory, moral and exemplary damages, and attorney's fees, under one cause of action.

He is in estoppel, therefore, to deny that the cause of action asserted in both cases is one and the same. At any rate, it is clear that the overtime claimed in the present case is the very object of Case No. 1800. Moreover, it is well settled that damages incidental to a cause of action cannot be made the subject of a suit independent from the principal cause.⁴

WHEREFORE, the order appealed from should be, as it is hereby, affirmed, with costs against plaintiff, Luis Enguerra.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando JJ., concur.
Benzon, J., on leave.

¹ G.R. No. L-13891, October 31, 1960, 60 Off. Gaz. 6196.

² See *Arnaldo v. Bernabe*, 87 Phil. 374; *Ylanan v. Mercado*, 94 Phil., 769 and *People v. Narsolis*, 85 Phil., 798.

³ *Larena v. Villanueva*, 53 Phil. 923. See, also, *Lavarro v. Labitoria*, 54 Phil., 791; *De Goma v. De Goma*, et al., G.R. No. L-18739, December 28, 1964; *Rheems of the Philippines, Inc. v. Ferrer*, et al., G.R. No. L-22979, January 27, 1967

4 Valencia v. Cebu Portland Cement Co., 57 Off. Gaz. 2135.

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