

PATRICIO ESTIOCO, ET AL., PLAINTIFFS-APPELLANTS, VS. SINAI C. HAMADA, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-11079. May 21, 1958*

Ponente: BAUTISTA ANGELO, J.

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This is an action for damages brought before the Court of First Instance of Baguio by plaintiffs against defendants on the ground of fraud in the preparation and execution of certain indemnity agreement. The complaint contains three causes of action: the first is for damages arising from an indemnity agreement which was declared null and void in Civil Case No. 279; the second is for damages arising from an alleged malicious suit instituted at the instigation of defendants (Case No. 293); and the third is for damages arising from attachment levied on plaintiffs' properties in Case No. 293.

Defendants moved to dismiss the complaint upon the grounds (1) that the complaint states no cause of action; and (2) that the alleged causes of action are already barred for failure of plaintiffs to set them up as a counterclaim in Case No. 279. The court found the motion well founded and dismissed the complaint. Plaintiffs appealed the case to the Court of Appeals but the case was certified to us on the ground that it involves only questions of law.

The present case is closely related to Civil Cases Nos. 279 and 293 instituted in 1951 before the Court of First Instance of Baguio. Civil Case No. 293 was an action instituted by the Alto Surety & Insurance Co., Inc. for the collection of a sum of money based upon an indemnity agreement which Julio Guariño, Patricio Estioco and Lucina V. Siapno executed and delivered to said bonding company. It was originally instituted in the Municipal Court of Baguio on September 26, 1951, and the said court decided said case in favor of plaintiffs and against defendants. From said decision, the said defendants appealed to the Court of First Instance of Baguio. While said case was pending determination in the Municipal Court of Baguio, Civil Case No. 279 was instituted in the Court of First Instance of Baguio by two of the defendants in the former case, namely, Patricio Estioco and Lucina V. Siapno, against the Alto Surety & Insurance Co., Inc. for the annulment of the indemnity agreement involved in the former case. These two cases were tried jointly and, on October 7, 1952, decision was rendered wherein defendants Patricio Estioco and Lucina V. Siapno were absolved from the complaint and the indemnity agreement was declared, null and void. The case having been appealed to the Court of Appeals, the decision was affirmed. A petition for review on certiorari was dismissed by the Supreme Court on November 10, 1954.

The present action is now an offshoot of the dismissal of Civil Case No. 293 against Patricio Estioco and Lucina V. Siapno and the annulment of the indemnity agreement in Civil Case No. 279, and the action is levelled not against the Alto Surety & Insurance Co., Inc. but against Sinai C. Hamada, who acted as its counsel in the two civil cases above-mentioned, Guillermo F. de Guzman, who acted as his co-counsel in the same cases, and Leoncio Esquejo, who as Deputy Sheriff of Baguio actively intervened in the procurement and execution of the indemnity agreement subject matter of litigation in said cases. They are made responsible for damages for their alleged illegal participation in the preparation of said agreement and in the attachment of plaintiffs' properties.

The question now to be determined is whether the lower court erred in dismissing the cases on the ground that the causes of action set forth therein are now barred for failure of plaintiffs to set them up as a counterclaim in Cases Nos. 279 and 293 which gave rise to the present action.

There is no merit in this appeal. The present action is for damages based on the ground that defendants took an active part in the illegal preparation and execution of the indemnity agreement which was declared null and void in Civil Case No. 279, and also because they had caused to have a writ of attachment levied on the properties of plaintiffs maliciously and without any justifiable motive. On the other hand, Civil Case No. 279 was instituted by plaintiffs against the Alto Surety & Insurance Co., Inc. for the annulment of the indemnity agreement which is claimed to have been illegally executed. In the latter case, it must have been claimed and proven that said indemnity agreement was executed and prepared because of the active participation of Attys. Hamada and De Guzman who have taken advantage of the ignorance and good faith of plaintiffs for which reason the court declared said agreement null and void and without effect. The issues involved in the two cases are therefore connected and interrelated and could have been threshed out only in one case. It is for this reason that the court a quo said that "after a study of the same (it) holds that the actions for damages in all the causes of action are in the nature of a counterclaim necessarily connected with the main causes of action in Cases Nos. 279 and 293. The failure to set them up in said cases bars their being brought up in a separate action." This finding is correct. To hold otherwise would be to pass on the same issues in two separate cases, a situation which our rules seek to avoid (Rule 10, Section 6).

It is true that in Civil Case No. 279 the only party defendant was the Alto Surety & Insurance Co., Inc., whereas in the present action the parties defendants are the attorneys of said company, namely, Sinai C. Hamada and Guillermo F. de Guzman, but this situation could have been remedied had plaintiffs in the former case brought them in as parties defendants, as it was their duty to do, in order that judgment, if any, could be rendered against them. This is also allowed by our rules (Rule 3, Section 6). Their failure to do so constitute a bar to the present action.

The same thing may be said with regard to the third cause of action which arises from the alleged participation of defendants in the improper attachment of the properties of plaintiffs in Civil Case No. 293. If it is true, as claimed, that plaintiffs had suffered damages as a result of said illegal attachment, the duty of plaintiffs was to file their claim in the same case in order that the award, if proper, may be included in the final judgment. The claim must be filed before entry of the final judgment with due notice to the parties affected. This is necessary in order to avoid multiplicity of actions (Rule 59, section 20).

"Upon mature consideration, we have reached the conclusion that under the terms of section 20 of Rule 59, the application for damages and the notice to the sureties should be filed in the trial Court by the party damaged by the wrongful or improper attachment either 'before the trial or, the latest, 'before entry of the final judgment', which means not later than the date when the judgment becomes final and executory (sec. 2, Rule 35). Only in this way could the award against the sureties be included in the final judgment' as required by the first part of sec. 20 of Rule 59. The rule plainly calls for only one judgment for damages against the attaching party and his sureties; which is explained by the fact that the attachment bond is a solidary obligation. Since a judicial bondsman has no right to demand the exhaustion of the property of the principal debtor (as expressly provided by Art. 2084 of the new Civil Code, and Art. 1856 of the old one), there is no justification for the entering of separate judgments against them. With a single judgment against principal and sureties, the prevailing party may choose, at his discretion, to enforce the award of damages against whosoever he considers in a better situation to pay it.

"It should be observed that the requirements of section 20 of Rule 59 appear designed to avoid multiplicity of suits. But to enable the defendant to secure a hearing and judgment against the sureties in the attachment

"bond, even after the judgment for damages against the principal has become final, would result in as great a multiplicity of actions as would flow from enabling him to sue the principal and the sureties in separate proceedings." (Domingo del Rosario v. Gonzalo P. Nava, et al., G. R. No. L-5513, August 18, 1954)

Wherefore, the order appealed from, is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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